

108TH CONGRESS
1ST SESSION

S. 9

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2003

Mr. DASCHLE (for himself, Mr. KENNEDY, Mr. BINGAMAN, Ms. MIKULSKI, Mr. DURBIN, Mrs. CLINTON, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. SCHUMER, Mr. DAYTON, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Pension Protection and Expansion Act of 2003”.

4 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—DIVERSIFICATION OF PENSION PLAN ASSETS

- Sec. 101. Defined contribution plans required to provide employees with freedom to invest their plan assets.
Sec. 102. Notice of freedom to divest employer securities or real property.
Sec. 103. Notice that contributions of employer securities are not endorsements of investment options.
Sec. 104. Rules relating to plan investments in employer stock.

TITLE II—PROTECTION OF PENSION PLAN PARTICIPANTS

- Sec. 201. Notice to participants or beneficiaries of blackout periods.
Sec. 202. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.
Sec. 203. Liability for breach of fiduciary duty.
Sec. 204. Increase in maximum bond amount and insurance adequate to protect interest of participants and beneficiaries.
Sec. 205. Participation of participants in trusteeship of individual account plans.

TITLE III—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

- Sec. 301. Periodic pension benefit statements.
Sec. 302. Defined contribution plans required to provide adequate investment education to participants.
Sec. 303. Fiduciary duty to provide material information relating to investment in employer securities.
Sec. 304. Fiduciary responsibility to certify investments in employer securities as prudent investments.
Sec. 305. Fiduciary rules for plan sponsors designating independent investment advisers.
Sec. 306. Provisions relating to whistleblower actions involving pension plans.
Sec. 307. Increase in penalties for coercive interference.

TITLE IV—RETIREMENT SECURITY

- Sec. 401. Short title; etc.
Sec. 402. Expansion of retirement savings credit.
Sec. 403. Universal access to direct deposit retirement savings.
Sec. 404. Credit for qualified pension plan contributions of small employers.
Sec. 405. Alternative method of meeting nondiscrimination requirements for opt-out plans.
Sec. 406. Protection of participants during conversions to cash balance or other hybrid defined benefit plans.

TITLE V—WOMEN’S PENSION PROTECTION

Sec. 501. Short title.

Subtitle A—Spousal Consent Required for Distributions From Defined Contribution Plans

Sec. 511. Application of joint and survivor annuity rules to all defined contribution plans.

Subtitle B—Division of Pension Benefits Upon Divorce

Sec. 521. Treatment of subsequent qualified domestic relations orders.

Sec. 522. Former spouses treated as surviving spouses in certain cases.

Subtitle C—Protection of Rights of Former Spouses to Pension Benefits Under Certain Government and Government-Sponsored Retirement Programs

CHAPTER 1—CIVIL SERVICE RETIREMENT

Sec. 531. Survivor annuities for widows, widowers, and former spouses of Federal employees who die before attaining age for deferred annuity under Civil Service Retirement System.

Sec. 532. Court orders relating to Federal retirement benefits for former spouses of Federal employees.

Sec. 533. Interest on amounts paid for certain civil service annuity benefits wrongfully denied.

Sec. 534. Income averaging of corrected civil service annuity benefit payments.

Sec. 535. Order of precedence for disposition of amounts remaining in the Thrift Savings Account of a Federal employee (or former employee) who dies before making an effective election controlling such disposition.

CHAPTER 2—RAILROAD RETIREMENT

Sec. 541. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.

Sec. 542. Extension of Tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

Subtitle D—Modifications of Joint and Survivor Annuity Requirements

Sec. 551. Modifications of joint and survivor annuity requirements.

Subtitle E—Plan Amendments

Sec. 561. Provisions relating to plan amendments.

TITLE VI—OTHER PROVISIONS RELATING TO PENSIONS

Subtitle A—General Provisions

Sec. 601. Employee plans compliance resolution system.

Sec. 602. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.

Sec. 603. Notice and consent period regarding distributions.

Sec. 604. Technical corrections to Saver Act.

Sec. 605. Missing participants.

Sec. 606. Reduced PBGC premium for new plans of small employers.

Sec. 607. Reduction of additional PBGC premium for new and small plans.

- Sec. 608. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 609. Substantial owner benefits in terminated plans.
- Sec. 610. Benefit suspension notice.
- Sec. 611. Interest rate range for additional funding requirements.
- Sec. 612. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 613. Automatic rollovers of certain mandatory distributions.
- Sec. 614. 2-year extension of transition rule to pension funding requirements.
- Sec. 615. Acceleration of computation of benefits attributable to recoveries of employer liability under section 4062.
- Sec. 616. Multiemployer plan funding notice.
- Sec. 617. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 618. Withholding on distributions from governmental section 457 plans.
- Sec. 619. Transfer of pension plan liabilities upon dissolution of joint venture.

Subtitle B—Studies

- Sec. 621. Study regarding insurance system for individual account plans.
- Sec. 622. Study regarding fees charged by individual account plans.
- Sec. 623. Joint study on revitalizing defined benefit plans.
- Sec. 624. Study on floor-offset ESOPS.

Subtitle C—Plan Amendments

- Sec. 631. Provisions relating to plan amendments.

TITLE VII—REVENUE OFFSETS

- Sec. 700. Amendment of 1986 Code.

Subtitle A—Reversing the Expatriation of Profits Offshore

- Sec. 701. Tax treatment of inverted corporate entities.
- Sec. 702. Excise tax on stock compensation of insiders in inverted corporations.
- Sec. 703. Reinsurance of United States risks in foreign jurisdictions.
- Sec. 704. Study of deductibility of interest on related-party debt.

Subtitle B—Provisions Relating to Tax Shelters

PART I—ECONOMIC SUBSTANCE DOCTRINE AND TAX SHELTER TRANSPARENCY

- Sec. 711. Penalty for failing to disclose reportable transaction.
- Sec. 712. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
- Sec. 713. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 714. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

PART II—PROMOTER AND PREPARER RELATED PROVISIONS

SUBPART A—PROVISIONS RELATING TO REPORTABLE TRANSACTIONS

- Sec. 721. Disclosure of reportable transactions.
- Sec. 722. Modifications to penalty for failure to register tax shelters.

- Sec. 723. Modification of penalty for failure to maintain lists of investors.
 Sec. 724. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.

SUBPART B—OTHER PROMOTER AND PREPARER PROVISIONS

- Sec. 731. Understatement of taxpayer's liability by income tax return preparer.
 Sec. 732. Penalty on failure to report interests in foreign financial accounts.
 Sec. 733. Frivolous tax submissions.
 Sec. 734. Regulation of individuals practicing before the Department of Treasury.
 Sec. 735. Penalty on promoters of tax shelters.

Subtitle C—Executive Compensation

- Sec. 741. Repeal of 1978 Revenue Act limitation on Secretary of the Treasury's authority to determine year of inclusion of amounts under private deferred compensation plans.
 Sec. 742. Treatment of nonqualified deferred compensation funded with assets located outside the United States.
 Sec. 743. Inclusion in gross income of funded deferred compensation of corporate insiders.
 Sec. 744. Increase in withholding from supplemental wage payments in excess of \$1,000,000.

Subtitle D—Other Provisions

- Sec. 751. Affirmation of consolidated return regulation authority.
 Sec. 752. Denial of deduction for certain fines, penalties, and other amounts.

1 **TITLE I—DIVERSIFICATION OF** 2 **PENSION PLAN ASSETS**

3 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO** 4 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-** 5 **VEST THEIR PLAN ASSETS.**

6 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

7 (1) QUALIFICATION REQUIREMENT.—Section
 8 401(a) of the Internal Revenue Code of 1986 (relat-
 9 ing to qualified pension, profit-sharing, and stock
 10 bonus plans) is amended by inserting after para-
 11 graph (34) the following new paragraph:

1 “(35) DIVERSIFICATION REQUIREMENTS FOR
2 CERTAIN DEFINED CONTRIBUTION PLANS.—

3 “(A) IN GENERAL.—A trust which is part
4 of an applicable defined contribution plan shall
5 not be treated as a qualified trust unless the
6 plan meets—

7 “(i) the diversification requirements of
8 subparagraphs (B), (C), and (D), and

9 “(ii) the voting rights requirement of
10 subparagraph (E).

11 “(B) EMPLOYEE CONTRIBUTIONS AND
12 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
13 SECURITIES OR REAL PROPERTY.—In the case
14 of the portion of an applicable individual’s ac-
15 count attributable to employee contributions
16 and elective deferrals which is invested in em-
17 ployer securities or employer real property, a
18 plan meets the requirements of this subpara-
19 graph if the applicable individual may elect to
20 direct the plan to divest any such securities or
21 real property and to reinvest an equivalent
22 amount in other investment options meeting the
23 requirements of subparagraph (D).

24 “(C) EMPLOYER CONTRIBUTIONS IN-
25 VESTED IN EMPLOYER SECURITIES OR REAL

1 PROPERTY.—In the case of the portion of the
 2 account attributable to employer contributions
 3 other than elective deferrals which is invested in
 4 employer securities or employer real property, a
 5 plan meets the requirements of this subpara-
 6 graph if each applicable individual who—

7 “(i) is a participant who has com-
 8 pleted at least 3 years of service, or

9 “(ii) is a beneficiary of a participant
 10 described in clause (i) or of a deceased
 11 participant,

12 may elect to direct the plan to divest any such
 13 securities or real property and to reinvest an
 14 equivalent amount in other investment options
 15 meeting the requirements of subparagraph (D).

16 “(D) INVESTMENT OPTIONS.—

17 “(i) IN GENERAL.—The requirements
 18 of this subparagraph are met if the plan
 19 offers not less than 3 investment options,
 20 other than employer securities or employer
 21 real property, to which an applicable indi-
 22 vidual may direct the proceeds from the di-
 23 vestment of employer securities or em-
 24 ployer real property pursuant to this para-
 25 graph, each of which is diversified and has

1 materially different risk and return charac-
2 teristics.

3 “(ii) TIME FOR TAKING ACTION.—If
4 an applicable individual makes an election
5 under this paragraph to reinvest the pro-
6 ceeds from the divestment of any securities
7 or real property, the plan administrator
8 shall take such actions as are necessary to
9 effectuate such reinvestment before the
10 earlier of—

11 “(I) the date such actions are re-
12 quired to be taken without regard to
13 this clause, or

14 “(II) 30 days after the date of
15 such election (or if such election is
16 made with respect to an investment
17 period described in clause (iii), 30
18 days after the close of such period).

19 The Secretary may extend the period
20 under subclause (II) in cases with respect
21 to which the Secretary determines such ex-
22 tension is necessary to carry out the pur-
23 poses of this paragraph.

24 “(iii) TREATMENT OF CERTAIN RE-
25 STRICTIONS AND CONDITIONS.—

1 “(I) TIME FOR MAKING INVEST-
2 MENT CHOICES.—A plan shall not be
3 treated as failing to meet the require-
4 ments of this subparagraph merely be-
5 cause the plan limits the time for di-
6 vestment and reinvestment to peri-
7 odic, reasonable opportunities occur-
8 ring no less frequently than quarterly.

9 “(II) CERTAIN RESTRICTIONS
10 AND CONDITIONS NOT ALLOWED.—To
11 the extent provided in regulations, a
12 plan shall not meet the requirements
13 of this subparagraph if the plan im-
14 poses restrictions or conditions with
15 respect to the investment of employer
16 securities or employer real property
17 which are not imposed on the invest-
18 ment of other assets of the plan. This
19 subclause shall not apply to any re-
20 strictions or conditions imposed by
21 reason of the application of securities
22 laws.

23 “(E) VOTING RIGHTS.—

24 “(i) IN GENERAL.—An applicable de-
25 fined contribution plan shall not be treated

1 as meeting the requirements of this para-
 2 graph unless the plan meets the require-
 3 ments of section 409(e)(2) with respect to
 4 publicly traded employer securities.

5 “(ii) EXCEPTION.—Clause (i) shall
 6 not apply to publicly traded employer secu-
 7 rities acquired by reason of an investment
 8 of an applicable individual in a pooled in-
 9 vestment vehicle. For purposes of this sub-
 10 clause, a pooled investment vehicle is an
 11 investment option of the plan which is not
 12 designed to invest primarily in employer
 13 securities.

14 “(iii) ASSIGNMENT OF VOTING
 15 RIGHTS.—Nothing in this subparagraph
 16 shall be construed as limiting an applicable
 17 individual’s ability to assign the individ-
 18 ual’s rights under this subparagraph to an-
 19 other person.

20 “(F) APPLICABLE DEFINED CONTRIBU-
 21 TION PLAN.—For purposes of this paragraph—

22 “(i) IN GENERAL.—The term ‘applica-
 23 ble defined contribution plan’ means any
 24 defined contribution plan which holds any
 25 publicly traded employer securities.

1 “(ii) EXCEPTION FOR CERTAIN
 2 ESOPS.—Such term does not include an
 3 employee stock ownership plan if—

4 “(I) there are no contributions to
 5 such plan (or earnings thereunder)
 6 which are held within such plan and
 7 are subject to subsection (k) or (m),
 8 and

9 “(II) such plan is a separate plan
 10 for purposes of section 414(l) with re-
 11 spect to any other defined benefit plan
 12 or defined contribution plan main-
 13 tained by the same employer or em-
 14 ployers.

15 “(iii) EXCEPTION FOR ONE PARTICI-
 16 PANT PLANS.—Such term does not include
 17 a one-participant retirement plan.

18 “(iv) ONE-PARTICIPANT RETIREMENT
 19 PLAN.—For purposes of clause (iii), the
 20 term ‘one-participant retirement plan’
 21 means a retirement plan that—

22 “(I) on the first day of the plan
 23 year covered only one individual (or
 24 the individual and the individual’s
 25 spouse) and the individual owned the

1 plan sponsor (whether or not incor-
2 porated), or covered only one or more
3 partners (or partners and their
4 spouses) in the plan sponsor,

5 “(II) meets the minimum cov-
6 erage requirements of section 410(b)
7 without being combined with any
8 other plan of the business that covers
9 the employees of the business,

10 “(III) does not provide benefits
11 to anyone except the individual (and
12 the individual’s spouse) or the part-
13 ners (and their spouses),

14 “(IV) does not cover a business
15 that is a member of an affiliated serv-
16 ice group, a controlled group of cor-
17 porations, or a group of businesses
18 under common control, and

19 “(V) does not cover a business
20 that leases employees (within the
21 meaning of section 414(n)).

22 For purposes of this clause, the term ‘part-
23 ner’ includes a 2-percent shareholder (as
24 defined in section 1372(b)) of an S cor-
25 poration.

1 “(G) CERTAIN PLANS TREATED AS HOLD-
 2 ING PUBLICLY TRADED EMPLOYER SECURI-
 3 TIES.—

4 “(i) IN GENERAL.—Except as pro-
 5 vided in regulations or in clause (ii), a plan
 6 holding employer securities which are not
 7 publicly traded employer securities shall be
 8 treated as holding publicly traded employer
 9 securities if any employer corporation, or
 10 any member of a controlled group of cor-
 11 porations which includes such employer
 12 corporation, has issued a class of stock
 13 which is a publicly traded employer secu-
 14 rity.

15 “(ii) EXCEPTION FOR CERTAIN CON-
 16 TROLLED GROUPS WITH PUBLICLY TRAD-
 17 ED SECURITIES.—Clause (i) shall not
 18 apply to a plan if—

19 “(I) no employer corporation, or
 20 parent corporation of an employer
 21 corporation, has issued any publicly
 22 traded employer security, and

23 “(II) no employer corporation, or
 24 parent corporation of an employer
 25 corporation, has issued any special

1 class of stock which grants particular
2 rights to, or bears particular risks for,
3 the holder or issuer with respect to
4 any corporation described in clause (i)
5 which has issued any publicly traded
6 employer security.

7 “(iii) DEFINITIONS.—For purposes of
8 this subparagraph, the term—

9 “(I) ‘controlled group of corpora-
10 tions’ has the meaning given such
11 term by section 1563(a), except that
12 ‘50 percent’ shall be substituted for
13 ‘80 percent’ each place it appears,

14 “(II) ‘employer corporation’
15 means a corporation which is an em-
16 ployer maintaining the plan, and

17 “(III) ‘parent corporation’ has
18 the meaning given such term by sec-
19 tion 424(e).

20 “(H) OTHER DEFINITIONS.—For purposes
21 of this paragraph—

22 “(i) APPLICABLE INDIVIDUAL.—The
23 term ‘applicable individual’ means—

24 “(I) any participant in the plan,
25 and

1 “(II) any beneficiary who has an
 2 account under the plan with respect to
 3 which the beneficiary is entitled to ex-
 4 ercise the rights of a participant.

5 “(ii) ELECTIVE DEFERRAL.—The
 6 term ‘elective deferral’ means an employer
 7 contribution described in section
 8 402(g)(3)(A).

9 “(iii) EMPLOYER SECURITY.—The
 10 term ‘employer security’ has the meaning
 11 given such term by section 407(d)(1) of
 12 the Employee Retirement Income Security
 13 Act of 1974.

14 “(iv) EMPLOYER REAL PROPERTY.—
 15 The term ‘employer real property’ has the
 16 meaning given such term by section
 17 407(d)(2) of the Employee Retirement In-
 18 come Security Act of 1974.

19 “(v) EMPLOYEE STOCK OWNERSHIP
 20 PLAN.—The term ‘employee stock owner-
 21 ship plan’ has the meaning given such
 22 term by section 4975(e)(7).

23 “(vi) PUBLICLY TRADED EMPLOYER
 24 SECURITIES.—The term ‘publicly traded
 25 employer securities’ means employer secu-

1 rities which are readily tradable on an es-
2 tablished securities market.

3 “(vii) YEAR OF SERVICE.—The term
4 ‘year of service’ has the meaning given
5 such term by section 411(a)(5).

6 “(I) TRANSITION RULE FOR SECURITIES
7 OR REAL PROPERTY ATTRIBUTABLE TO EM-
8 PLOYER CONTRIBUTIONS.—

9 “(i) RULES PHASED IN OVER 3
10 YEARS.—

11 “(I) IN GENERAL.—In the case
12 of the portion of an account to which
13 subparagraph (C) applies and which
14 consists of employer securities or em-
15 ployer real property acquired in a plan
16 year beginning before January 1,
17 2004, subparagraph (C) shall only
18 apply to the applicable percentage of
19 such securities or real property. This
20 subparagraph shall be applied sepa-
21 rately with respect to each class of se-
22 curities and employer real property.

23 “(II) EXCEPTION FOR CERTAIN
24 PARTICIPANTS AGED 55 OR OVER.—
25 Subclause (I) shall not apply to an

1 applicable individual who is a partici-
 2 pant who has attained age 55 and
 3 completed at least 3 years of service
 4 before the first plan year beginning
 5 after December 31, 2003.

6 “(ii) APPLICABLE PERCENTAGE.—For
 7 purposes of clause (i), the applicable per-
 8 centage shall be determined as follows:

**“Plan year to which limit ap- The applicable percentage is:
 plies:**

1st	33 percent
2d	66 percent
3d and following	100 percent.”

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 401(a)(28)(B) of such Code
 11 (relating to additional requirements relating to
 12 employee stock ownership plans) is amended by
 13 adding at the end the following new clause:

14 “(v) EXCEPTION.—This subparagraph
 15 shall not apply to an applicable defined
 16 contribution plan (as defined in paragraph
 17 (35)(F)).”

18 (B) Section 409(h)(7) of such Code is
 19 amended by inserting “or subparagraph (B) or
 20 (C) of section 401(a)(35)” before the period at
 21 the end.

22 (C) Section 4980(c)(3)(A) of such Code is
 23 amended by striking “if—” and all that follows

1 and inserting “if the requirements of subpara-
2 graphs (B), (C), and (D) are met.”

3 (b) AMENDMENTS OF ERISA.—

4 (1) IN GENERAL.—Section 204 of the Employee
5 Retirement Income Security Act of 1974 (29 U.S.C.
6 1054) is amended by redesignating subsection (j) as
7 subsection (k) and by inserting after subsection (i)
8 the following new subsection:

9 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN
10 INDIVIDUAL ACCOUNT PLANS.—

11 “(1) IN GENERAL.—An applicable individual ac-
12 count plan shall meet—

13 “(A) the diversification requirements of
14 paragraphs (2), (3), and (4), and

15 “(B) the voting rights requirement of
16 paragraph (5).

17 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
18 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-
19 TIES OR REAL PROPERTY.—In the case of the por-
20 tion of an applicable individual’s account attrib-
21 utable to employee contributions and elective defer-
22 rals which is invested in employer securities or em-
23 ployer real property, a plan meets the requirements
24 of this paragraph if the applicable individual may
25 elect to direct the plan to divest any such securities

1 or real property and to reinvest an equivalent
 2 amount in other investment options meeting the re-
 3 quirements of paragraph (4).

4 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
 5 EMPLOYER SECURITIES OR REAL PROPERTY.—In the
 6 case of the portion of the account attributable to
 7 employer contributions other than elective deferrals
 8 which is invested in employer securities or employer
 9 real property, a plan meets the requirements of this
 10 paragraph if each applicable individual who—

11 “(A) is a participant who has completed at
 12 least 3 years of service, or

13 “(B) is a beneficiary of a participant de-
 14 scribed in subparagraph (A) or of a deceased
 15 participant,

16 may elect to direct the plan to divest any such secu-
 17 rities or real property and to reinvest an equivalent
 18 amount in other investment options meeting the re-
 19 quirements of paragraph (4).

20 “(4) INVESTMENT OPTIONS.—

21 “(A) IN GENERAL.—The requirements of
 22 this paragraph are met if the plan offers not
 23 less than 3 investment options, other than em-
 24 ployer securities or employer real property, to
 25 which an applicable individual may direct the

proceeds from the divestment of employer securities or employer real property pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

“(B) TIME FOR TAKING ACTION.—If an applicable individual makes an election under this subsection to reinvest the proceeds from the divestment of any securities or real property, the plan administrator shall take such actions as are necessary to effectuate such reinvestment before the earlier of—

“(i) the date such actions are required to be taken without regard to this subparagraph, or

“(ii) 30 days after the date of such election (or if such election is made with respect to an investment period described in subparagraph (C), 30 days after the close of such period).

The Secretary may extend the period under clause (ii) in cases with respect to which the Secretary determines such extension is necessary to carry out the purposes of this subsection.

1 “(C) TREATMENT OF CERTAIN RESTRIC-
2 TIONS AND CONDITIONS.—

3 “(i) TIME FOR MAKING INVESTMENT
4 CHOICES.—A plan shall not be treated as
5 failing to meet the requirements of this
6 paragraph merely because the plan limits
7 the time for divestment and reinvestment
8 to periodic, reasonable opportunities occur-
9 ring no less frequently than quarterly.

10 “(ii) CERTAIN RESTRICTIONS AND
11 CONDITIONS NOT ALLOWED.—To the ex-
12 tent provided in regulations, a plan shall
13 not meet the requirements of this para-
14 graph if the plan imposes restrictions or
15 conditions with respect to the investment
16 of employer securities or employer real
17 property which are not imposed on the in-
18 vestment of other assets of the plan. This
19 subparagraph shall not apply to any re-
20 strictions or conditions imposed by reason
21 of the application of securities laws.

22 “(5) VOTING RIGHTS.—

23 “(A) IN GENERAL.—An applicable indi-
24 vidual account plan shall not be treated as
25 meeting the requirements of this subsection un-

less the plan meets the requirements of section 409(e)(2) of the Internal Revenue Code of 1986 with respect to publicly traded employer securities.

“(B) EXCEPTION.—Subparagraph (A) shall not apply to publicly traded employer securities acquired by reason of an investment of an applicable individual in a pooled investment vehicle. For purposes of this subparagraph, a pooled investment vehicle is an investment option of the plan which is not designed to invest primarily in employer securities.

“(C) ASSIGNMENT OF VOTING RIGHTS.—Nothing in this paragraph shall be construed as limiting an applicable individual’s ability to assign the individual’s rights under this subparagraph to another person.

“(6) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘applicable individual account plan’ means any individual account plan (as defined in section 3(34)) which holds any publicly traded employer securities.

1 “(B) EXCEPTION FOR CERTAIN ESOPS.—

2 Such term does not include an employee stock
3 ownership plan if—

4 “(i) there are no contributions to such
5 plan (or earnings thereunder) which are
6 held within such plan and are subject to
7 subsection (k) or (m) of section 401 of the
8 Internal Revenue Code of 1986, and

9 “(ii) such plan is a separate plan (for
10 purposes of section 414(l) of such Code)
11 with respect to any other defined benefit
12 plan or individual account plan maintained
13 by the same employer or employers.

14 “(C) EXCEPTION FOR ONE PARTICIPANT
15 PLANS.—Such term shall not include a one-par-
16 ticipant retirement plan (as defined in section
17 101(i)(8)(B)).

18 “(D) CERTAIN PLANS TREATED AS HOLD-
19 ING PUBLICLY TRADED EMPLOYER SECURI-
20 TIES.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in regulations or in clause (ii), a plan
23 holding employer securities which are not
24 publicly traded employer securities shall be
25 treated as holding publicly traded employer

1 securities if any employer corporation, or
 2 any member of a controlled group of cor-
 3 porations which includes such employer
 4 corporation, has issued a class of stock
 5 which is a publicly traded employer secu-
 6 rity.

7 “(ii) EXCEPTION FOR CERTAIN CON-
 8 TROLLED GROUPS WITH PUBLICLY TRAD-
 9 ED SECURITIES.—Clause (i) shall not
 10 apply to a plan if—

11 “(I) no employer corporation, or
 12 parent corporation of an employer
 13 corporation, has issued any publicly
 14 traded employer security, and

15 “(II) no employer corporation, or
 16 parent corporation of an employer
 17 corporation, has issued any special
 18 class of stock which grants particular
 19 rights to, or bears particular risks for,
 20 the holder or issuer with respect to
 21 any corporation described in clause (i)
 22 which has issued any publicly traded
 23 employer security.

24 “(iii) DEFINITIONS.—For purposes of
 25 this subparagraph, the term—

1 “(I) ‘controlled group of corpora-
 2 tions’ has the meaning given such
 3 term by section 1563(a) of the Inter-
 4 nal Revenue Code of 1986, except
 5 that ‘50 percent’ shall be substituted
 6 for ‘80 percent’ each place it appears,

7 “(II) ‘employer corporation’
 8 means a corporation which is an em-
 9 ployer maintaining the plan, and

10 “(III) ‘parent corporation’ has
 11 the meaning given such term by sec-
 12 tion 424(e) of such Code.

13 “(7) OTHER DEFINITIONS.—For purposes of
 14 this paragraph—

15 “(A) APPLICABLE INDIVIDUAL.—The term
 16 ‘applicable individual’ means—

17 “(i) any participant in the plan, and

18 “(ii) any beneficiary who has an ac-
 19 count under the plan with respect to which
 20 the beneficiary is entitled to exercise the
 21 rights of a participant.

22 “(B) ELECTIVE DEFERRAL.—The term
 23 ‘elective deferral’ means an employer contribu-
 24 tion described in section 402(g)(3)(A) of the In-
 25 ternal Revenue Code of 1986.

1 “(C) EMPLOYER SECURITY.—The term
2 ‘employer security’ has the meaning given such
3 term by section 407(d)(1).

4 “(D) EMPLOYER REAL PROPERTY.—The
5 term ‘employer real property’ has the meaning
6 given such term by section 407(d)(2).

7 “(E) EMPLOYEE STOCK OWNERSHIP
8 PLAN.—The term ‘employee stock ownership
9 plan’ has the meaning given such term by sec-
10 tion 4975(e)(7) of such Code.

11 “(F) PUBLICLY TRADED EMPLOYER SECU-
12 RITIES.—The term ‘publicly traded employer
13 securities’ means employer securities which are
14 readily tradable on an established securities
15 market.

16 “(G) YEAR OF SERVICE.—The term ‘year
17 of service’ has the meaning given such term by
18 section 203(b)(2).

19 “(8) TRANSITION RULE FOR SECURITIES OR
20 REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-
21 TRIBUTIONS.—

22 “(A) RULES PHASED IN OVER 3 YEARS.—

23 “(i) IN GENERAL.—In the case of the
24 portion of an account to which paragraph
25 (3) applies and which consists of employer

securities or employer real property acquired in a plan year beginning before January 1, 2004, paragraph (3) shall only apply to the applicable percentage of such securities or real property. This subparagraph shall be applied separately with respect to each class of securities and employer real property.

“(ii) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2003.

“(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined as follows:

“Plan year to which limit applies: The applicable percentage is:	
1st	33 percent
2d	66 percent
3d and following	100 percent.”

(2) FIDUCIARY RESPONSIBILITY.—Section 404 of such Act (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

“(e) FIDUCIARY RESPONSIBILITY WITH RESPECT TO DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL AC-

1 COUNT PLANS.—The fiduciary of an applicable individual
 2 account plan (as defined in section 204(j)) shall, in addi-
 3 tion to any other fiduciary responsibility or duty, have a
 4 fiduciary responsibility to ensure the plan’s compliance
 5 with the requirements of section 204(j).”

6 **SEC. 102. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**
 7 **CURITIES OR REAL PROPERTY.**

8 (a) IN GENERAL.—Section 104 of the Employee Re-
 9 tirement Income Security Act of 1974 (29 U.S.C. 104)
 10 is amended by redesignating subsection (d) as subsection
 11 (e) and by inserting after subsection (c) the following new
 12 subsection:

13 “(d) NOTICE OF RIGHT TO DIVEST.—Not later than
 14 30 days before the first date on which an applicable indi-
 15 vidual of an applicable individual account plan is eligible
 16 to exercise the right under section 204(j) to direct the pro-
 17 ceeds from the divestment of employer securities or em-
 18 ployer real property, the plan administrator shall provide
 19 to such individual a notice—

20 “(1) setting forth such right under such sec-
 21 tion, and

22 “(2) describing the importance of diversifying
 23 the investment of retirement account assets.

24 The Secretary shall prescribe a model notice for purposes
 25 of satisfying the requirements of this subsection which

1 shall be in a form calculated to be understood by the aver-
 2 age plan participant. The notice required by this sub-
 3 section may be delivered in written, electronic, or other
 4 appropriate form to the extent that such form is reason-
 5 ably accessible to the applicable individual.”

6 (b) PENALTIES.—Section 502(c)(7) of the Employee
 7 Retirement Income Security Act of 1974 (29 U.S.C.
 8 1132(c)(7)) is amended by inserting “or section 104(d)”
 9 after “section 101(i)”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to plan years beginning after De-
 12 cember 31, 2003.

13 **SEC. 103. NOTICE THAT CONTRIBUTIONS OF EMPLOYER SE-**
 14 **CURITIES ARE NOT ENDORSEMENTS OF IN-**
 15 **VESTMENT OPTIONS.**

16 (a) IN GENERAL.—Section 104 of the Employee Re-
 17 tirement Income Security Act of 1974 (29 U.S.C. 1024),
 18 as amended by section 102, is amended by redesignating
 19 subsection (e) as subsection (f) and by inserting after sub-
 20 section (d) the following new subsection:

21 “(e) NOTICE THAT CERTAIN EMPLOYER CONTRIBU-
 22 TIONS ARE NOT ENDORSEMENTS.—If employer matching
 23 contributions or employer nonelective contributions are
 24 made to an applicable individual account plan (within the
 25 meaning of section 204(j)) in the form of employer securi-

1 ties, the plan administrator of the plan shall include with
 2 the notice required under section 105(a)(1)(A) a state-
 3 ment informing participants and beneficiaries that the
 4 matching or nonelective contributions should not be treat-
 5 ed as an endorsement of such securities as a better invest-
 6 ment option than the other options provided by the plan.
 7 The Secretary shall issue guidance and provide model no-
 8 tices which meet the requirements of this subsection.”

9 (b) PENALTIES.—Section 502(c)(7) of such Act, as
 10 amended by section 102, is amended by striking “section
 11 104(d)” and inserting “subsection (d) or (e) of section
 12 104”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to plan years beginning after De-
 15 cember 31, 2003.

16 **SEC. 104. RULES RELATING TO PLAN INVESTMENTS IN EM-**
 17 **PLOYER STOCK.**

18 (a) IN GENERAL.—Section 404 of the Employee Re-
 19 tirement Income Security Act of 1974 (29 U.S.C. 1104)
 20 is amended by adding at the end the following new sub-
 21 section:

22 “(f)(1)(A) Except as provided in this subsection, an
 23 individual account plan under which a participant or bene-
 24 ficiary is permitted to exercise control over assets in his
 25 or her account shall provide that if the plan (or any other

1 plan maintained by the employer which covers the partici-
2 pant or beneficiary) requires employer contributions other
3 than elective deferrals to be invested in employer securities
4 or employer real property, the plan may not permit elec-
5 tive deferrals to be invested in employer securities or em-
6 ployer real property.

7 “(B) This subsection shall not apply to an individual
8 account plan maintained by an employer for any plan year
9 if the employer maintains a qualified defined benefit plan
10 (as defined in paragraph (3)) for the plan year.

11 “(2)(A) A plan which offers as an investment option
12 the purchase of stock through an open brokerage account
13 or similar investment vehicle shall not be treated as meet-
14 ing the requirements of paragraph (1) unless the plan pro-
15 vides that such option may not be used to purchase em-
16 ployer securities or employer real property which are to
17 be held by the plan.

18 “(B) A plan shall not be treated as failing to meet
19 the requirements of paragraph (1) merely because elective
20 deferrals are invested in employer securities or employer
21 real property by reason of an investment in a pooled in-
22 vestment vehicle. For purposes of this clause, a pooled in-
23 vestment vehicle is an investment option of the plan which
24 is not designed to invest primarily in employer securities
25 or employer real property.

1 “(3)(A) For purposes of paragraph (1)(B), the term
 2 ‘qualified defined benefit plan’ means, with respect to any
 3 individual account plan, a defined benefit plan—

4 “(i) which covers at least 90 percent of the em-
 5 ployees as are covered by the individual account
 6 plan, and

7 “(ii) with respect to which the accrued benefit
 8 of each participant, payable at normal retirement
 9 age under the plan, is not less than a benefit which
 10 is actuarially equivalent to a percentage of the par-
 11 ticipant’s final average pay equal to 1 percent multi-
 12 plied by the number of years of service (not greater
 13 than 20) of the participant.

14 If a plan provides for benefits payable prior to normal re-
 15 tirement age, the requirements of clause (ii) shall not be
 16 treated as met unless such benefits are at least equal to
 17 the actuarial equivalent of the normal retirement benefit
 18 under the plan.

19 “(B) In applying clause (ii) of subparagraph (A) to
 20 a defined benefit plan with respect to which a participant’s
 21 accrued benefit is equal to a fixed dollar amount multi-
 22 plied by the number of years of service—

23 “(i) the participant’s pay during the plan year
 24 preceding the plan year of the determination shall be
 25 used in lieu of final average pay, and

1 “(ii) the plan shall be treated as satisfying the
2 requirement of such clause if the average accrued
3 benefit under the plan of all the participants who
4 are also covered by the individual account plan
5 meets such requirement.”

6 (b) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendments made by
8 this section shall apply to plan years beginning after
9 December 31, 2003.

10 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
11 GAINED AGREEMENTS.—In the case of a plan main-
12 tained pursuant to 1 or more collective bargaining
13 agreements between employee representatives and 1
14 or more employers ratified on or before the date of
15 the enactment of this Act, subsection (a) shall be ap-
16 plied to benefits pursuant to, and individuals covered
17 by, any such agreement by substituting for “Decem-
18 ber 31, 2002” the earlier of—

19 (A) the later of—

20 (i) December 31, 2004, or

21 (ii) the date on which the last of such
22 collective bargaining agreements termi-
23 nates (determined without regard to any
24 extension thereof after such date of enact-
25 ment), or

(B) December 31, 2004.

TITLE II—PROTECTION OF PENSION PLAN PARTICIPANTS

SEC. 201. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF BLACKOUT PERIODS.

(a) IN GENERAL.—Section 101(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)) is amended—

(1) by striking “the terms of” in paragraph (7)(A),

(2) by striking clause (i) of paragraph (8)(B) and inserting:

“(i) on the first day of the plan year—

“(I) covered only one individual (or the individual and the individual’s spouse) and the individual owned the plan sponsor (whether or not incorporated), or

“(II) covered only one or more partners (or partners and their spouses) in the plan sponsor,”,

(3) by striking “employer” and “employer’s” in paragraph (8)(B)(iii) and inserting “individual” and “individual’s”, respectively,

1 (4) by inserting “(within the meaning of section
 2 414(n) of the Internal Revenue Code of 1986)” after
 3 “employees” in paragraph (8)(B)(v), and
 4 (5) by adding at the end of paragraph (8)(B)
 5 the following flush sentence:

6 “For purposes of this paragraph, an individual
 7 shall be treated as a partner if the individual is
 8 so treated under section 401(a)(35)(F)(iv) of
 9 the Internal Revenue Code of 1986.”

10 (b) EFFECTIVE DATE.—The amendments made by
 11 this section shall take effect as if included in the provisions
 12 of section 306 of Public Law 107–204 (116 Stat. 745 et
 13 seq.).

14 **SEC. 202. INAPPLICABILITY OF RELIEF FROM FIDUCIARY**
 15 **LIABILITY DURING SUSPENSION OF ABILITY**
 16 **OF PARTICIPANT OR BENEFICIARY TO DI-**
 17 **RECT INVESTMENTS.**

18 (a) IN GENERAL.—Section 404(c)(1) of the Em-
 19 ployee Retirement Income Security Act of 1974 (29
 20 U.S.C. 1104(c)(1)) is amended—

21 (1) by redesignating subparagraphs (A) and
 22 (B) as clauses (i) and (ii), respectively, and by in-
 23 serting “(A)” after “(c)(1)”,

24 (2) in subparagraph (A)(ii) (as redesignated by
 25 paragraph (1)), by inserting before the period the

1 following: “, except that this clause shall not apply
2 in connection with such participant or beneficiary
3 for any blackout period during which the ability of
4 such participant or beneficiary to direct the invest-
5 ment of the assets in his or her account is sus-
6 pended by a plan sponsor or fiduciary”, and

7 (3) by adding at the end the following new sub-
8 paragraphs:

9 “(B)(i) If the person referred to in subparagraph
10 (A)(ii) meets the requirements of this title in connection
11 with authorizing and implementing the blackout period,
12 such person shall not be liable under this title for any loss
13 occurring during such period as a result of any exercise
14 by the participant or beneficiary of control over assets in
15 his or her account before the period. Matters to be consid-
16 ered in determining whether such person has satisfied the
17 requirements of this title include, but are not limited to,
18 whether such person—

19 “(I) has considered the reasonableness of the
20 expected blackout period,

21 “(II) has provided the notice required under
22 section 101(i)(1), and

23 “(III) has acted in accordance with the require-
24 ments of subsection (a) in determining whether to
25 enter into the blackout period.

1 “(ii) For purposes of this subsection, if a blackout
 2 period arises in connection with a change in the invest-
 3 ment options offered under the plan, a participant or bene-
 4 ficiary shall be deemed to have exercised control over the
 5 assets in his or her account prior to the blackout period
 6 if, after notice of the change in investment options is given
 7 to such participant or beneficiary, assets in the account
 8 of the participant or beneficiary are transferred—

9 “(I) to plan investment options in accordance
 10 with the affirmative election of the participant or
 11 beneficiary which otherwise meets the conditions of
 12 this subsection; or

13 “(II) in the absence of such an election and in
 14 the case in which fiduciary relief was provided under
 15 this subsection for the prior investment options, to
 16 plan investment options with reasonably comparable
 17 risk and return characteristics in accordance with
 18 procedures set forth in such notice.

19 “(C) For purposes of this paragraph, the term ‘black-
 20 out period’ has the meaning given such term by section
 21 101(i)(7).”

22 (b) GUIDANCE.—The Secretary of Labor, in consulta-
 23 tion with the Secretary of the Treasury, shall, before De-
 24 cember 31, 2003, issue interim final regulations providing
 25 guidance, including safe harbors, on how plan sponsors or

1 any other affected fiduciaries can satisfy their fiduciary
 2 responsibilities during any blackout period during which
 3 the ability of a participant or beneficiary to direct the in-
 4 vestment of assets in his or her individual account is sus-
 5 pended.

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by
 8 this section shall apply to plan years beginning after
 9 December 31, 2003.

10 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 11 GAINED AGREEMENTS.—In the case of a plan main-
 12 tained pursuant to 1 or more collective bargaining
 13 agreements between employee representatives and 1
 14 or more employers ratified on or before the date of
 15 the enactment of this Act, subsection (a) shall be ap-
 16 plied to benefits pursuant to, and individuals covered
 17 by, any such agreement by substituting for “Decem-
 18 ber 31, 2002” the earlier of—

19 (A) the later of—

20 (i) December 31, 2004, or

21 (ii) the date on which the last of such
 22 collective bargaining agreements termi-
 23 nates (determined without regard to any
 24 extension thereof after such date of enact-
 25 ment), or

1 (B) December 31, 2005.

2 **SEC. 203. LIABILITY FOR BREACH OF FIDUCIARY DUTY.**

3 (a) LIABILITY FOR PARTICIPATING IN OR CONCEALING FIDUCIARY BREACH.—

5 (1) IN GENERAL.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended by redesignating subsection (b) as subsection (d) and by inserting after subsection (a) the following new subsections:

10 “(b)(1) If an insider with respect to the plan sponsor of an individual account plan that holds employer securities that are readily tradable on an established securities market knowingly participates in, or knowingly undertakes to conceal, an act or omission of fiduciary responsibility knowing such act or omission is a breach of fiduciary responsibility, such insider shall be personally liable under this subsection to the plan or to any participant or beneficiary of the plan for such breach in the same manner as the fiduciary who commits such breach.

20 “(2) For purposes of paragraph (1), the term ‘insider’ means, with respect to any plan sponsor of a plan to which paragraph (1) applies—

23 “(A) any officer (as defined in section 240.3b–2 of title 17 of the Code of Federal Regulations, as

1 in effect on the date of the enactment of this clause)
 2 or director with respect to the plan sponsor, or

3 “(B) any independent qualified public account-
 4 ant of the plan or of the plan sponsor.

5 “(c) In the case of an individual account plan, any
 6 relief provided under this section shall, to the extent the
 7 court may deem appropriate, inure to the individual ac-
 8 count of any individual affected by the breach (or directly
 9 to such individual in the absence of an individual account).
 10 Nothing in this subsection shall be construed to give rise
 11 to any inference of the existence or nonexistence of a right
 12 under this section, section 502, or any other provision of
 13 this title.”

14 (2) CONFORMING AMENDMENT.—Section
 15 409(d) of such Act (29 U.S.C. 1109(c)), as redesign-
 16 nated by paragraph (1), is amended by inserting be-
 17 fore the period the following: “, unless such liability
 18 arises under subsection (b)”.

19 (b) MAINTENANCE OF FIDUCIARY LIABILITY.—Sec-
 20 tion 404(c)(1)(A)(ii) of such Act (29 U.S.C.
 21 1104(c)(1)(A)(ii)), as amended by section 202(a), is
 22 amended by inserting before the period the following: “and
 23 shall not be construed to exempt any fiduciary from liabil-
 24 ity for any violation of subsection (e) or (g)”.

25 (c) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
 2 this section shall apply with respect to breaches of
 3 fiduciary responsibility occurring on or after the
 4 date of the enactment of this Act.

5 (2) RELIEF TO INDIVIDUALS.—Section 409(c)
 6 of the Employee Retirement Income Security Act of
 7 1974, as added by this section, shall apply to actions
 8 which are pending on, or commenced on or after, the
 9 date of the enactment of this Act.

10 **SEC. 204. INCREASE IN MAXIMUM BOND AMOUNT AND IN-**
 11 **SURANCE ADEQUATE TO PROTECT INTEREST**
 12 **OF PARTICIPANTS AND BENEFICIARIES.**

13 (a) IN GENERAL.—Section 412(a) of the Employee
 14 Retirement Income Security Act of 1974 (29 U.S.C. 1112)
 15 is amended by adding at the end the following: “In the
 16 case of a plan that holds employer securities (within the
 17 meaning of section 407(d)(1)), this subsection shall be ap-
 18 plied by substituting ‘\$1,000,000’ for ‘\$500,000’ each
 19 place it appears.”

20 (b) ADDITIONAL REQUIREMENTS FOR APPLICABLE
 21 INDIVIDUAL ACCOUNT PLANS.—Section 412 of the Em-
 22 ployee Retirement Income Security Act of 1974 (29
 23 U.S.C. 1112) is amended by adding at the end the fol-
 24 lowing new subsection:

1 “(f) Notwithstanding the preceding provisions of this
 2 section, each fiduciary of an individual account plan which
 3 covers more than 100 participants shall be insured, in ac-
 4 cordance with regulations prescribed by the Secretary, to
 5 provide reasonable coverage for failures to meet the re-
 6 quirements of this part.”

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—The amendment made by
 9 this section shall take effect on the date on which
 10 the regulations required to be promulgated under
 11 section 412(f) of the Employee Retirement Income
 12 Security Act of 1974 become final.

13 (2) REGULATIONS.—The Secretary of Labor
 14 shall prescribe the regulations necessary to carry out
 15 section 412(f) of the Employee Retirement Income
 16 Security Act of 1974, as added by this section, not
 17 later than one year after the date of the enactment
 18 of this Act.

19 **SEC. 205. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**
 20 **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

21 (a) IN GENERAL.—Section 403(a) of the Employee
 22 Retirement Income Security Act of 1974 (29 U.S.C.
 23 1103(a)) is amended—

24 (1) by redesignating paragraphs (1) and (2) as
 25 subparagraphs (A) and (B), respectively;

1 (2) by inserting “(1)” after “(a)”; and

2 (3) by adding at the end the following new
3 paragraph:

4 “(2)(A) The assets of a single-employer plan which
5 is an individual account plan which covers more than 100
6 participants shall be held in trust by a joint board of trust-
7 ees, which shall consist of two or more trustees rep-
8 resenting on an equal basis the interests of the employer
9 or employers maintaining the plan and the interests of the
10 participants and their beneficiaries.

11 “(B)(i) Except as provided in clause (ii), in any case
12 in which the plan is maintained pursuant to one or more
13 collective bargaining agreements between one or more em-
14 ployee organizations and one or more employers, the trust-
15 ees representing the interests of the participants and their
16 beneficiaries shall be designated by such employee organi-
17 zations.

18 “(ii) Clause (i) shall not apply with respect to a plan
19 described in such clause if the employee organization (or
20 all employee organizations, if more than one) referred to
21 in such clause file with the Secretary, in such form and
22 manner as shall be prescribed in regulations of the Sec-
23 retary, a written waiver of their rights under clause (i).

24 “(iii) In any case in which clause (i) does not apply
25 with respect to a single-employer plan because the plan

1 is not described in clause (i) or because of a waiver filed
 2 pursuant to clause (ii), the trustee or trustees representing
 3 the interests of the participants and their beneficiaries
 4 shall be elected by the participants in accordance with reg-
 5 ulations of the Secretary. An individual shall not be treat-
 6 ed as ineligible for selection as trustee solely because such
 7 individual is an employee of the plan sponsor, except that
 8 the employee so selected may not be a highly compensated
 9 employee (as defined in section 414(q) of the Internal Rev-
 10 enue Code of 1986).

11 “(iv) The Secretary shall provide by regulation for
 12 the appointment of a neutral, in accordance with the pro-
 13 cedures under section 203(f) of the Labor Management
 14 Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as
 15 necessary to resolve tie votes by the trustees.”

16 (b) REGULATIONS.—The Secretary of Labor shall
 17 prescribe the initial regulations necessary to carry out the
 18 provisions of the amendments made by this section not
 19 later than 90 days after the date of the enactment of this
 20 Act.

21 **TITLE III—INFORMATION TO AS-** 22 **SIST PENSION PLAN PARTICI-** 23 **PANTS**

24 **SEC. 301. PERIODIC PENSION BENEFIT STATEMENTS.**

25 (a) PERIODIC PENSION BENEFIT STATEMENTS.—

1 (1) IN GENERAL.—Section 105(a) of the Em-
 2 ployee Retirement Income Security Act of 1974 (29
 3 U.S.C. 1025(a)) is amended to read as follows:

4 “(a)(1)(A) The administrator of an individual ac-
 5 count plan (other than a one-participant retirement plan
 6 described in section 101(i)(8)(B)) shall furnish a pension
 7 benefit statement—

8 “(i) at least once each calendar quarter to a
 9 participant or beneficiary who has the right to direct
 10 the investment of assets in his or her account under
 11 the plan,

12 “(ii) at least once each calendar year to a par-
 13 ticipant or beneficiary who has his or her own ac-
 14 count under the plan but does not have the right to
 15 direct the investment of assets in that account, and

16 “(iii) upon written request to a plan beneficiary
 17 not described in clause (i) or (ii).

18 “(B) The administrator of a defined benefit plan
 19 shall furnish a pension benefit statement—

20 “(i) at least once every 3 years to each partici-
 21 pant with a nonforfeitable accrued benefit, and

22 “(ii) to a participant or beneficiary of the plan
 23 upon written request.

24 Information furnished under clause (i) to a participant
 25 may be based on reasonable estimates determined under

1 regulations prescribed by the Secretary, in consultation
 2 with the Pension Benefit Guaranty Corporation.

3 “(2)(A) A pension benefit statement under paragraph
 4 (1)—

5 “(i) shall indicate, on the basis of the latest
 6 available information—

7 “(I) the total benefits accrued, and

8 “(II) the nonforfeitable pension benefits, if
 9 any, which have accrued, or the earliest date on
 10 which benefits will become nonforfeitable,

11 “(ii) shall include an explanation of any offsets
 12 that may be applied in determining any accrued ben-
 13 efits described in clause (i),

14 “(iii) shall be written in a manner calculated to
 15 be understood by the average plan participant, and

16 “(iv) may be delivered in written, electronic, or
 17 other appropriate form to the extent such form is
 18 reasonably accessible to the participant or bene-
 19 ficiary.

20 “(B) In the case of an individual account plan, the
 21 pension benefit statement under clause (i) or (ii) of para-
 22 graph (1)(A) shall include—

23 “(i) the value of each investment to which as-
 24 sets in the individual account have been allocated,
 25 determined as of the most recent valuation date

1 under the plan, including the value of any assets
 2 held in the form of employer securities, without re-
 3 gard to whether such securities were contributed by
 4 the plan sponsor or acquired at the direction of the
 5 plan or of the participant or beneficiary,

6 “(ii) an explanation of any limitations or re-
 7 strictions on any right of the participant or bene-
 8 ficiary under the plan to direct an investment, and

9 “(iii) if the percentage of assets in the indi-
 10 vidual account that consists of employer securities
 11 and employer real property (as defined in para-
 12 graphs (1) and (2), respectively, of section 407(d)),
 13 determined as of the most recent valuation date
 14 under the plan, exceeds 20 percent of the total ac-
 15 count, a notice that the account may be overinvested
 16 in employer securities and employer real property.

17 Employer securities and employer real property held by
 18 a plan by reason of a pooled investment vehicle described
 19 in section 204(j)(5)(B) shall be excluded for purposes of
 20 clause (iii) from the calculation of the assets in an account
 21 that consist of employer securities and employer real prop-
 22 erty. Clause (iii) shall not apply to any plan to which sec-
 23 tion 204(j) does not apply.

24 “(3)(A) In the case of a defined benefit plan, the re-
 25 quirements of paragraph (1)(B)(i) shall be treated as met

1 with respect to a participant if at least once each year
 2 the administrator provides to the participant at the par-
 3 ticipant's last known address notice of the availability of
 4 the pension benefit statement and the ways in which the
 5 participant may obtain such statement. Such notice may
 6 be delivered in written, electronic, or other appropriate
 7 form to the extent such form is reasonably accessible to
 8 the participant.

9 “(B) The Secretary may provide that years in which
 10 no employee or former employee benefits (within the
 11 meaning of section 410(b) of the Internal Revenue Code
 12 of 1986) under the plan need not be taken into account
 13 in determining the 3-year period under paragraph
 14 (1)(B)(i).

15 “(C) The Secretary may provide that the require-
 16 ments of paragraph (2)(A)(i)(II) are met if, at least annu-
 17 ally, the plan—

18 “(i) updates the information described in such
 19 paragraph which is provided in the pension benefit
 20 statement, or

21 “(ii) provides such information in a separate
 22 statement.”

23 (b) INCLUSION OF FUNDED LIABILITY PERCENTAGE
 24 IN ANNUAL REPORT.—Section 103(d) of the Employee
 25 Retirement Income Security Act of 1974 (29 U.S.C.

1 1023(d)) is amended by redesignating paragraphs (12)
 2 and (13) as paragraphs (13) and (14), respectively, and
 3 by adding after paragraph (11) the following new para-
 4 graph:

5 “(12) In the case of a plan with more than 100
 6 participants, the funded current liability percentage
 7 (as defined in section 302(d)(8)(B)) for the current
 8 plan year and the immediately preceding plan year,
 9 including all calculations necessary to determine
 10 such percentage.”

11 (c) CONFORMING AMENDMENTS.—

12 (1) Section 105 of the Employee Retirement In-
 13 come Security Act of 1974 (29 U.S.C. 1025) is
 14 amended by striking subsection (d).

15 (2) Section 105(b) of such Act (29 U.S.C.
 16 1025(b)) is amended to read as follows:

17 “(b) In no case shall a participant or beneficiary of
 18 a plan be entitled to more than 1 statement described in
 19 subsection (a)(1) (A)(iii) or (B)(ii), whichever is applica-
 20 ble, in any 12-month period.”

21 (d) MODEL STATEMENTS.—The Secretary of Labor
 22 shall develop 1 or more model benefit statements, written
 23 in a manner calculated to be understood by the average
 24 plan participant, that may be used by plan administrators

1 in complying with the requirements of section 105 of the
2 Employee Retirement Income Security Act of 1974.

3 (e) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to plan years beginning after
6 December 31, 2003.

7 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
8 GAINED AGREEMENTS.—In the case of a plan main-
9 tained pursuant to 1 or more collective bargaining
10 agreements between employee representatives and 1
11 or more employers ratified on or before the date of
12 the enactment of this Act, subsection (a) shall be ap-
13 plied to benefits pursuant to, and individuals covered
14 by, any such agreement by substituting for “Decem-
15 ber 31, 2003” the earlier of—

16 (A) the later of—

17 (i) December 31, 2004, or

18 (ii) the date on which the last of such
19 collective bargaining agreements termi-
20 nates (determined without regard to any
21 extension thereof after such date of enact-
22 ment), or

23 (B) December 31, 2005.

1 **SEC. 302. DEFINED CONTRIBUTION PLANS REQUIRED TO**
 2 **PROVIDE ADEQUATE INVESTMENT EDU-**
 3 **CATION TO PARTICIPANTS.**

4 (a) ADEQUATE INVESTMENT EDUCATION.—

5 (1) IN GENERAL.—Section 104 of the Employee
 6 Retirement Income Security Act of 1974 (29 U.S.C.
 7 1024), as amended by sections 102 and 103, is
 8 amended by redesignating subsection (f) as sub-
 9 section (g) and by inserting after subsection (e) the
 10 following new subsection:

11 “(f)(1) The plan administrator of an individual ac-
 12 count plan (other than a one-participant retirement plan
 13 described in section 101(i)(8)(B)) shall furnish at least
 14 once each year to each participant or beneficiary who has
 15 the right to direct the investment of assets in his or her
 16 account the model form relating to basic investment guide-
 17 lines which is described in paragraph (2).

18 “(2)(A) The Secretary shall develop and make avail-
 19 able to individual account plans for distribution under
 20 paragraph (1) a model form containing basic guidelines
 21 for investing for retirement. Such guidelines shall in-
 22 clude—

23 “(i) information on the benefits of diversifica-
 24 tion,

25 “(ii) information on the essential differences, in
 26 terms of risk and return, of pension plan invest-

1 ments, including stocks, bonds, mutual funds, and
2 money market investments,

3 “(iii) information on how an applicable individ-
4 ual’s pension plan investment allocations may differ
5 depending on the individual’s age and years to re-
6 irement and on other factors determined by the
7 Secretary,

8 “(iv) sources of information where applicable
9 individuals may learn more about pension rights, in-
10 dividual investing, and investment advice, and

11 “(v) such other information related to indi-
12 vidual investing as the Secretary determines appro-
13 priate.

14 “(B) The model form under subparagraph (A) shall
15 include addresses for Internet sites, and a worksheet,
16 which an applicable individual may use to calculate—

17 “(i) the retirement age annuity value of the ap-
18 plicable individual’s nonforfeitable pension benefits
19 under the plan (determined by reference to varied
20 historical annual rates of return and annuity inter-
21 est rates), and

22 “(ii) other important amounts relating to retire-
23 ment savings, including the amount which an appli-
24 cable individual would be required to save annually
25 to provide a retirement income equal to various re-

1 placement of their current salary (adjusted for ex-
 2 pected growth prior to retirement).

3 The Secretary shall develop an Internet site which an ap-
 4 plicable individual may use in making such calculations
 5 and the address for such site shall be included with the
 6 form.

7 “(C) The Secretary shall provide at least 90 days for
 8 public comment before publishing final notice of the model
 9 form.

10 “(3) The model form under paragraph (2)—

11 “(A) shall be written in a manner calculated to
 12 be understood by the average plan participant, and

13 “(B) may be delivered in written, electronic, or
 14 other appropriate form to the extent such form is
 15 reasonably accessible to applicable individuals.”

16 (2) ENFORCEMENT.—Section 502(c)(7) of such
 17 Act (29 U.S.C. 1132(c)(7)), as amended by sections
 18 102 and 103, is amended by striking “subsection (d)
 19 or (e)” and inserting “subsection (d), (e), or (f)”.

20 (b) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
 22 this section shall apply to plan years beginning after
 23 December 31, 2004.

24 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 25 GAINED AGREEMENTS.—In the case of a plan main-

1 tained pursuant to 1 or more collective bargaining
 2 agreements between employee representatives and 1
 3 or more employers ratified on or before the date of
 4 the enactment of this Act, subsection (a) shall be ap-
 5 plied to benefits pursuant to, and individuals covered
 6 by, any such agreement by substituting for “Decem-
 7 ber 31, 2003” the earlier of—

8 (A) the later of—

9 (i) December 31, 2005, or

10 (ii) the date on which the last of such
 11 collective bargaining agreements termi-
 12 nates (determined without regard to any
 13 extension thereof after such date of enact-
 14 ment), or

15 (B) December 31, 2006.

16 **SEC. 303. FIDUCIARY DUTY TO PROVIDE MATERIAL INFOR-**
 17 **MATION RELATING TO INVESTMENT IN EM-**
 18 **PLOYER SECURITIES.**

19 (a) IN GENERAL.—Section 404(c) of the Employee
 20 Retirement Income Security Act of 1974 (29 U.S.C.
 21 1104(c)) is amended by adding at the end the following
 22 new paragraph:

23 “(4) The plan sponsor and plan administrator of a
 24 pension plan described in paragraph (1) shall, in addition
 25 to any other fiduciary duty or responsibility under this

1 part, have a fiduciary duty to ensure that each participant
 2 and beneficiary under the plan, in connection with the in-
 3 vestment of assets in his or her account in employer secu-
 4 rities, is provided with all reports, proxy statements, and
 5 other communications regarding investment of such assets
 6 in employer securities to the extent that such reports,
 7 statements, and communications are generally required to
 8 be provided by the plan sponsor to investors in connection
 9 with such an investment under applicable securities laws.
 10 Such reports, statements, and communications may be de-
 11 livered in written, electronic, or other appropriate form to
 12 the extent such form is reasonably accessible to partici-
 13 pants and beneficiaries.”

14 (b) ENFORCEMENT.—Section 502 of such Act (29
 15 U.S.C. 1132) is amended—

16 (1) in subsection (a)(6), by striking “(6), or
 17 (7)” and inserting “(6), (7), or (8)”;

18 (2) by redesignating paragraph (8) of sub-
 19 section (c) as paragraph (9); and

20 (3) by inserting after paragraph (7) of sub-
 21 section (c) the following new paragraph:

22 “(8) The Secretary may assess a civil penalty against
 23 any person of up to \$1,000 a day from the date of the
 24 person’s failure or refusal to comply with the requirements

1 of section 404(c)(4) until such failure or refusal is cor-
 2 rected.”

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to plan years beginning after De-
 5 cember 31, 2003.

6 **SEC. 304. FIDUCIARY RESPONSIBILITY TO CERTIFY INVEST-**
 7 **MENTS IN EMPLOYER SECURITIES AS PRU-**
 8 **DENT INVESTMENTS.**

9 (a) IN GENERAL.—Section 404 of the Employee Re-
 10 tirement Income Security Act of 1974 (29 U.S.C. 1104),
 11 as amended by this Act, is amended by adding at the end
 12 the following new subsection:

13 “(g) CERTIFICATION OF INVESTMENT OPTION AS
 14 PRUDENT.—In the case of an applicable individual ac-
 15 count plan (as defined in section 204(j))—

16 “(1) which permits a plan participant or bene-
 17 ficiary to direct the investment of the assets in his
 18 or her account, and

19 “(2) in connection with an investment option
 20 offered under the plan (other than a pooled invest-
 21 ment vehicle described in section 204(j)(5)(B)), al-
 22 lows the participant or beneficiary to invest directly
 23 in publicly traded employer securities (within the
 24 meaning of section 204(j)),

1 the named fiduciary of the plan or the fiduciary respon-
 2 sible for determining plan investment options shall, in ad-
 3 dition to any other fiduciary responsibility or duty, certify
 4 to the Secretary in the annual report required under sec-
 5 tion 103 that the fiduciary has evaluated any investment
 6 option described in paragraph (2) and found it to meet
 7 the requirements of subsection (a). This subsection shall
 8 not apply in the case of an investment in employer securi-
 9 ties made at the direction of a participant or beneficiary
 10 through a brokerage account available in connection with
 11 the plan.”

12 (b) INCLUSION IN REPORT.—Section 103(c) of the
 13 Employee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1023(c)) is amended by adding at the end the fol-
 15 lowing new paragraph:

16 “(6) The certification required under section
 17 404(g).”

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendment made by
 20 this section shall apply to plan years beginning after
 21 the date on which the Secretary of Labor issues the
 22 regulations described in paragraph (2).

23 (2) REGULATIONS.—The Secretary of Labor
 24 shall prescribe regulations to implement section
 25 404(g) of the Employee Retirement Income Security

1 Act of 1974 (as added by subsection (a)) no later
 2 than 1 year after the date of the enactment of this
 3 Act.

4 **SEC. 305. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**
 5 **NATING INDEPENDENT INVESTMENT ADVIS-**
 6 **ERS.**

7 (a) IN GENERAL.—Section 404 of the Employee Re-
 8 tirement Income Security Act of 1974 (29 U.S.C. 1104),
 9 as amended by this Act, is amended by adding at the end
 10 the following new subsection:

11 “(h) INDEPENDENT INVESTMENT ADVISER.—

12 “(1) IN GENERAL.—In the case of an individual
 13 account plan which permits a plan participant or
 14 beneficiary to direct the investment of the assets in
 15 his or her account, if a plan sponsor or other person
 16 who is a fiduciary designates and monitors a quali-
 17 fied investment adviser pursuant to the requirements
 18 of paragraph (3), such fiduciary—

19 “(A) shall be deemed to have satisfied the
 20 requirements under this section for the prudent
 21 designation and periodic review of an invest-
 22 ment adviser with whom the plan sponsor or
 23 other person who is a fiduciary enters into an
 24 arrangement for the provision of advice referred
 25 to in section 3(21)(A)(ii),

“(B) shall not be liable under this section for any loss, or by reason of any breach, with respect to the provision of investment advice given by such adviser to any plan participant or beneficiary, and

“(C) shall not be liable for any co-fiduciary liability under subsections (a)(2) and (b) of section 405 with respect to the provision of investment advice given by such adviser to any plan participant or beneficiary.

“(2) QUALIFIED INVESTMENT ADVISER.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified investment adviser’ means, with respect to a plan, a person—

“(i) who is a fiduciary of the plan by reason of the provision of investment advice by such person to a plan participant or beneficiary;

“(ii) who—

“(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),

“(II) is registered as an investment adviser under the laws of the

1 State in which such adviser maintains
2 the principal office and place of busi-
3 ness of such adviser, but only if such
4 State laws are consistent with section
5 203A of the Investment Advisers Act
6 of 1940 (15 U.S.C. 80b–3a),

7 “(III) is a bank or similar finan-
8 cial institution referred to in section
9 408(b)(4),

10 “(IV) is an insurance company
11 qualified to do business under the
12 laws of a State, or

13 “(V) is any other comparably
14 qualified entity which satisfies such
15 criteria as the Secretary determines
16 appropriate, consistent with the pur-
17 poses of this subsection, and

18 “(iii) who meets the requirements of
19 subparagraph (B).

20 “(B) ADVISER REQUIREMENTS.—The re-
21 quirements of this subparagraph are met if
22 every individual employed (or otherwise com-
23 pensated) by a person described in subpara-
24 graph (A)(ii) who provides investment advice on

1 behalf of such person to any plan participant or
2 beneficiary is—

3 “(i) an individual described in sub-
4 clause (I) of subparagraph (A)(ii),

5 “(ii) an individual described in sub-
6 clause (II) of subparagraph (A)(ii), but
7 only if such State has an examination re-
8 quirement to qualify for registration,

9 “(iii) registered as a broker or dealer
10 under the Securities Exchange Act of 1934
11 (15 U.S.C. 78a et seq.),

12 “(iv) a registered representative as de-
13 scribed in section 3(a)(18) of the Securi-
14 ties Exchange Act of 1934 (15 U.S.C.
15 78c(a)(18)) or section 202(a)(17) of the
16 Investment Advisers Act of 1940 (15
17 U.S.C. 80b–2(a)(17)), or

18 “(v) any other comparably qualified
19 individual who satisfies such criteria as the
20 Secretary determines appropriate, con-
21 sistent with the purposes of this sub-
22 section.

23 “(3) VERIFICATION REQUIREMENTS.—The re-
24 quirements of this paragraph are met if—

1 “(A) the plan sponsor or other person who
2 is a fiduciary in designating a qualified invest-
3 ment adviser receives at the time of the des-
4 ignation, and annually thereafter, a written
5 verification from the qualified investment ad-
6 viser that the investment adviser—

7 “(i) is and remains a qualified invest-
8 ment adviser,

9 “(ii) acknowledges that the investment
10 adviser is a fiduciary with respect to the
11 plan and is solely responsible for its invest-
12 ment advice,

13 “(iii) has reviewed the plan documents
14 (including investment options) and has de-
15 termined that its relationship with the plan
16 and the investment advice provided to any
17 plan participant or beneficiary, including
18 any fees or other compensation it will re-
19 ceive, will not constitute a violation of sec-
20 tion 406,

21 “(iv) will, in providing investment ad-
22 vice to any participant or beneficiary, con-
23 sider any employer securities or employer
24 real property allocated to his or her ac-
25 count, and

1 “(v) has the necessary insurance cov-
2 erage (as determined by the Secretary) for
3 any claim by any plan participant or bene-
4 ficiary,

5 “(B) the plan sponsor or other person who
6 is a fiduciary in designating a qualified invest-
7 ment adviser reviews the documents described
8 in paragraph (4) provided by such adviser and
9 determines that there is no material reason not
10 to enter into an arrangement for the provision
11 of advice by such qualified investment adviser,
12 and

13 “(C) the plan sponsor or other person who
14 is a fiduciary in designating a qualified invest-
15 ment adviser, within 30 days of having informa-
16 tion brought to its attention that the invest-
17 ment adviser is no longer qualified or that a
18 substantial number of plan participants or
19 beneficiaries have raised concerns about the
20 services being provided by the investment ad-
21 viser—

22 “(i) investigates such information and
23 concerns, and

24 “(ii) determines that there is no mate-
25 rial reason not to continue the designation

1 of the adviser as a qualified investment ad-
2 viser.

3 “(4) DOCUMENTATION.—A qualified investment
4 adviser shall provide the following documents to the
5 plan sponsor or other person who is a fiduciary in
6 designating the adviser:

7 “(A) The contract with the plan sponsor or
8 other person who is a fiduciary for the services
9 to be provided by the investment adviser to the
10 plan participants and beneficiaries.

11 “(B) A disclosure as to any fees or other
12 compensation that will be received by the in-
13 vestment adviser for the provision of such in-
14 vestment advice or as to any fees or other com-
15 pensation that will be received as a result of a
16 participant’s investment election.

17 “(C) The Uniform Application for Invest-
18 ment Adviser Registration as filed with the Se-
19 curities and Exchange Commission or a sub-
20 stantially similar disclosure application as de-
21 termined by and filed with the Secretary.

22 “(5) TREATMENT AS FIDUCIARY.—Any quali-
23 fied investment adviser that acknowledges it is a fi-
24 duciary pursuant to paragraph (3)(A)(ii) shall be
25 deemed a fiduciary under this part with respect to

1 the provision of investment advice to a plan partici-
 2 pant or beneficiary.”

3 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) is
 4 amended by inserting “(other than a qualified investment
 5 adviser)” after “fiduciary”.

6 (c) EFFECTIVE DATE.—The amendment made by
 7 this section shall apply with respect to investment advisers
 8 designated after the date of the enactment of this Act.

9 **SEC. 306. PROVISIONS RELATING TO WHISTLEBLOWER AC-**
 10 **TIONS INVOLVING PENSION PLANS.**

11 (a) AUTHORITY TO BRING ACTIONS.—Section
 12 502(a) of the Employee Retirement Income Security Act
 13 of 1974 (29 U.S.C. 1132(a)) is amended by striking “or”
 14 at the end of paragraph (8), by striking the period at the
 15 end of paragraph (9) and inserting “; or”, and by adding
 16 at the end the following new paragraph:

17 “(10) by the Secretary, or other person referred
 18 to in section 510—

19 “(A) to enjoin any act or practice which
 20 violates section 510 in connection with a pen-
 21 sion plan, or

22 “(B) to obtain—

23 “(i) either—

24 “(I) reinstatement with the same
 25 seniority status that the employee

1 would, but for such violation, have
 2 had, or

3 “(II) if reinstatement is not prac-
 4 ticable or cannot be ordered without
 5 delay, payment (for such period as the
 6 court determines appropriate) of the
 7 pay, including benefits, that would
 8 have been received if the employee
 9 had been reinstated,

10 “(ii) payment of back pay, including
 11 benefits and interest, and

12 “(iii) reasonable attorney fees and
 13 costs based upon the same standards as
 14 are used in awarding attorney fees and
 15 costs under subsection (g)(1).”

16 (b) ADDITIONAL ACTIONS WHICH MAY BE
 17 BROUGHT.—Section 510 of the Employee Retirement In-
 18 come Security Act of 1974 (29 U.S.C. 1140) is amended
 19 by striking all after “person because” in the second sen-
 20 tence and inserting “the person—

21 “(1) has provided information, caused informa-
 22 tion to be provided, or otherwise assisted in an in-
 23 vestigation, inquiry, or proceeding regarding any
 24 conduct which the employee reasonably believes con-
 25 stitutes a violation of this Act or of the Welfare and

1 Pension Plans Disclosure Act in connection with a
 2 pension plan if the information or assistance is pro-
 3 vided to, or the investigation is conducted by—

4 “(A) a Federal regulatory or law enforce-
 5 ment agency,

6 “(B) any Member of Congress or any com-
 7 mittee of Congress, or

8 “(C) a person with supervisory authority
 9 over the employee (or any other person working
 10 for the employer who has the authority to inves-
 11 tigate, discover, or terminate misconduct), or

12 “(2) has (with any knowledge of the employer)
 13 filed, caused to be filed, testified, participated in, or
 14 assisted in a proceeding filed or about to be filed in
 15 connection with an alleged violation of this Act in-
 16 volving a pension plan.

17 The provisions of section 502 shall be applicable in the
 18 enforcement of this section.”

19 **SEC. 307. INCREASE IN PENALTIES FOR COERCIVE INTER-**
 20 **REFERENCE.**

21 (a) IN GENERAL.—Section 511 of the Employment
 22 Retirement Income Security Act of 1974 (29 U.S.C. 1141)
 23 is amended—

24 (1) by striking “\$10,000” and inserting
 25 “\$100,000”, and

1 (2) by striking “one year” and inserting “5
2 years”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to violations occurring on and after
5 the date of the enactment of this Act.

6 **TITLE IV—RETIREMENT** 7 **SECURITY**

8 **SEC. 401. SHORT TITLE; ETC.**

9 (a) SHORT TITLE.—This title may be cited as the
10 “Retirement Security for All Americans Act”.

11 (b) AMENDMENT OF 1986 CODE.—Except as other-
12 wise expressly provided, whenever in this title an amend-
13 ment or repeal is expressed in terms of an amendment
14 to, or repeal of, a section or other provision, the reference
15 shall be considered to be made to a section or other provi-
16 sion of the Internal Revenue Code of 1986.

17 **SEC. 402. EXPANSION OF RETIREMENT SAVINGS CREDIT.**

18 (a) CREDIT TO BE REFUNDABLE; EXPANSION OF
19 ELIGIBILITY; CREDIT MADE PERMANENT.—Subpart C of
20 part IV of subchapter A of chapter 1 (relating to refund-
21 able credits) is amended by redesignating section 35 as
22 section 36 and by inserting after section 34 the following
23 new section:

1 **“SEC. 35. ELECTIVE DEFERRALS AND INDIVIDUAL RETIRE-**
 2 **MENT PLAN ACCOUNT CONTRIBUTIONS BY**
 3 **CERTAIN INDIVIDUALS.**

4 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
 5 gible individual, there shall be allowed as a credit against
 6 the tax imposed by this subtitle for the taxable year an
 7 amount equal to the applicable percentage of so much of
 8 the qualified retirement savings contributions of the eligi-
 9 ble individual for the taxable year as do not exceed \$2,000.

10 “(b) APPLICABLE PERCENTAGE.—For purposes of
 11 this section—

12 “(1) IN GENERAL.—The applicable percentage
 13 is 50 percent, reduced (but not below zero) by the
 14 percentage determined under paragraph (2).

15 “(2) AMOUNT OF REDUCTION.—The percentage
 16 determined under this paragraph shall be equal to
 17 the ratio that—

18 “(A) the excess of—

19 “(i) the taxpayer’s adjusted gross in-
 20 come for such taxable year, over

21 “(ii) the applicable dollar amount,
 22 bears to

23 “(B) the phaseout range.

24 “(3) APPLICABLE DOLLAR AMOUNT.—The ap-
 25 plicable dollar amount equals \$30,000 in the case of
 26 a taxpayer filing a joint return, \$22,500 in the case

1 of a taxpayer filing as a head of a household (as
2 defined in section 2(b)), and \$15,000 in the case of
3 all other taxpayers.

4 “(4) PHASEOUT RANGE.—The phaseout range
5 equals \$25,000 in the case of a taxpayer filing a
6 joint return, \$18,750 in the case of a taxpayer filing
7 as a head of a household (as so defined), and
8 \$12,500 in the case of all other taxpayers.

9 “(c) ELIGIBLE INDIVIDUAL.—For purposes of this
10 section—

11 “(1) IN GENERAL.—The term ‘eligible indi-
12 vidual’ means any individual if such individual has
13 attained the age of 18 as of the close of the taxable
14 year.

15 “(2) DEPENDENTS AND FULL-TIME STUDENTS
16 NOT ELIGIBLE.—The term ‘eligible individual’ shall
17 not include—

18 “(A) any individual with respect to whom
19 a deduction under section 151 is allowed to an-
20 other taxpayer for a taxable year beginning in
21 the calendar year in which such individual’s
22 taxable year begins, and

23 “(B) any individual who is a student (as
24 defined in section 151(c)(4)).

1 “(d) QUALIFIED RETIREMENT SAVINGS CONTRIBU-
2 TIONS.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘qualified retire-
4 ment savings contributions’ means, with respect to
5 any taxable year, the sum of—

6 “(A) the amount of the qualified retire-
7 ment contributions (as defined in section
8 219(e)) made by the eligible individual,

9 “(B) the amount of—

10 “(i) any elective deferrals (as defined
11 in section 402(g)(3)) of such individual,
12 and

13 “(ii) any elective deferral of com-
14 pensation by such individual under an eli-
15 gible deferred compensation plan (as de-
16 fined in section 457(b)) of an eligible em-
17 ployer described in section 457(e)(1)(A),
18 and

19 “(C) the amount of voluntary employee
20 contributions by such individual to any qualified
21 retirement plan (as defined in section 4974(c)).

22 “(2) REDUCTION FOR CERTAIN DISTRIBUTI-
23 TIONS.—

24 “(A) IN GENERAL.—The qualified retire-
25 ment savings contributions determined under

1 paragraph (1) shall be reduced (but not below
2 zero) by the aggregate distributions received by
3 the individual during the testing period from
4 any entity of a type to which contributions
5 under paragraph (1) may be made. The pre-
6 ceding sentence shall not apply to the portion of
7 any distribution which is not includible in gross
8 income by reason of a trustee-to-trustee trans-
9 fer or a rollover distribution.

10 “(B) TESTING PERIOD.—For purposes of
11 subparagraph (A), the testing period, with re-
12 spect to a taxable year, is the period which in-
13 cludes—

14 “(i) such taxable year,

15 “(ii) the 2 preceding taxable years,

16 and

17 “(iii) the period after such taxable
18 year and before the due date (including ex-
19 tensions) for filing the return of tax for
20 such taxable year.

21 “(C) EXCEPTED DISTRIBUTIONS.—There
22 shall not be taken into account under subpara-
23 graph (A)—

1 “(i) any distribution referred to in
 2 section 72(p), 401(k)(8), 401(m)(6),
 3 402(g)(2), 404(k), or 408(d)(4), and

4 “(ii) any distribution to which section
 5 408A(d)(3) applies.

6 “(D) TREATMENT OF DISTRIBUTIONS RE-
 7 CEIVED BY SPOUSE OF INDIVIDUAL.—For pur-
 8 poses of determining distributions received by
 9 an individual under subparagraph (A) for any
 10 taxable year, any distribution received by the
 11 spouse of such individual shall be treated as re-
 12 ceived by such individual if such individual and
 13 spouse file a joint return for such taxable year
 14 and for the taxable year during which the
 15 spouse receives the distribution.

16 “(e) ADJUSTED GROSS INCOME.—For purposes of
 17 this section, adjusted gross income shall be determined
 18 without regard to sections 911, 931, and 933.

19 “(f) INVESTMENT IN THE CONTRACT.—Notwith-
 20 standing any other provision of law, a qualified retirement
 21 savings contribution shall not fail to be included in deter-
 22 mining the investment in the contract for purposes of sec-
 23 tion 72 by reason of the credit under this section.”.

1 (b) CREDIT TREATED AS OVERPAYMENT OF TAX.—
 2 Section 6401(b) (relating to excessive credits) is amend-
 3 ed—

4 (1) by striking “If” in paragraph (1) and in-
 5 serting “Except as provided in paragraph (3)”, and

6 (2) by adding at the end the following new
 7 paragraph:

8 “(3) SPECIAL RULE FOR CREDIT UNDER SEC-
 9 TION 35.—If the amount allowable as a credit under
 10 section 35 (relating to retirement savings credit) for
 11 any taxable year exceeds the tax imposed for such
 12 taxable year by subtitle A (reduced by the credits al-
 13 lowable under subparts A, B, D, and G of part IV
 14 of subchapter A of chapter 1), the amount of such
 15 excess shall be considered an overpayment and shall
 16 be subject to the provisions of section 6401(1).”.

17 (c) TRANSFER OF OVERPAYMENT TO SECURE RE-
 18 TIREMENT SAVINGS BOND.—Section 6402 (relating to au-
 19 thority to make credits or refunds) is amended by adding
 20 at the end the following new subsection:

21 “(1) TRANSFER OF OVERPAYMENT TO SECURE RE-
 22 TIREMENT SAVINGS BOND.—

23 “(1) IN GENERAL.—In the case of any overpay-
 24 ment described in section 6401(b)(3), the Secretary
 25 shall, in the name of the taxpayer, issue a Secure

1 Retirement savings bond under section 3105(f)(1) of
 2 title 31, United States Code, in an amount equal
 3 to such overpayment.

4 “(2) JOINT RETURNS.—In the case of a tax-
 5 payer filing a joint return, any overpayment de-
 6 scribed in section 6401(b)(3) shall be divided equally
 7 among both spouses, and the Secretary shall, sepa-
 8 rately in the name of each spouse, issue a Secure
 9 Retirement savings bond under section 3105(f)(1) of
 10 title 31, United States Code, in an amount equal to
 11 such overpayments.”

12 (d) SECURE RETIREMENT SAVINGS BONDS.—Section
 13 3105 of title 31, United States Code, is amended by add-
 14 ing at the end the following new subsection:

15 “(f)(1) The Secretary shall issue Secure Retirement
 16 savings bonds as required under section 6402(l) of the In-
 17 ternal Revenue Code of 1986.

18 “(2) For purposes of paragraph (1), a Secure Retire-
 19 ment savings bond is an inflation-indexed savings bond
 20 otherwise authorized to be issued under this section, ex-
 21 cept that, notwithstanding any other provision of this sec-
 22 tion, such bond shall not mature before the earlier of the
 23 date on which the bondholder—

24 “(A) dies;

1 “(B) becomes disabled (within the meaning of
 2 section 72(m)(7) of the Internal Revenue Code of
 3 1986); or

4 “(C) attains social security retirement age
 5 under section 216(l)(2) of the Social Security Act
 6 (without regard to any early retirement age per-
 7 mitted under such section).

8 “(3) The Secretary may, in lieu of actually issuing
 9 Secure Retirement savings bonds, provide an annual ac-
 10 count statement to the bondholder reflecting the current
 11 value of the bonds, including accrued interest, nominally
 12 issued on behalf of such bondholder.”

13 (e) REPEAL OF NONREFUNDABLE CREDIT.—

14 (1) Section 25B is hereby repealed.

15 (2) Subparagraph (B) of section 25(b)(3) is
 16 amended by striking “and 25B”.

17 (3) Subparagraph (C) of section 25(e)(1) is
 18 amended by striking “25B,”.

19 (4) Sections 26(a)(1), 901(h), and 1400C are
 20 each amended by striking “24, and 25B” and insert-
 21 ing “and 24”.

22 (5) The table of sections for subpart A of part
 23 IV of subchapter A of chapter 1 is amended by
 24 striking the item relating to section 25B.

25 (f) TECHNICAL AMENDMENTS.—

“Sec. 35. Elective deferrals and individual retirement plan account contributions by certain individuals.
“Sec. 36. Overpayments of tax.”.

11 SEC. 403. UNIVERSAL ACCESS TO DIRECT DEPOSIT RETIRE-
12 MENT SAVINGS.

16 "SEC. 4980G. REQUIREMENTS FOR EMPLOYERS TO PRO-
17 VIDE EMPLOYEES ACCESS TO SALARY RE-
18 DUCATION CONTRIBUTIONS TO INDIVIDUAL
19 RETIREMENT PLANS.

23 “(b) AMOUNT.—The amount of the tax imposed by
24 subsection (a) on any failure for any calendar year shall

1 be \$100 with respect to each employee to whom such fail-
 2 ure relates.

3 “(c) PROCEDURES FOR NOTICE AND GRACE PE-
 4 RIOD.—Not later than 6 months after the date of the en-
 5 actment of this section, the Secretary shall prescribe and
 6 initiate implementation of procedures for obtaining from
 7 employers confirmation that such employers are in compli-
 8 ance with the requirements of subsection (d). The Sec-
 9 retary, in the Secretary’s discretion, may prescribe that
 10 the confirmation shall be obtained on an annual or less
 11 frequent basis, and may use for this purpose the annual
 12 report or quarterly report for employment taxes, or such
 13 other means as the Secretary may deem advisable. The
 14 tax imposed by subsection (a) shall not be imposed with
 15 respect to any failure that ends before the expiration of
 16 90 days after the employer has responded or has had a
 17 reasonable opportunity to respond to a request for con-
 18 firmation of compliance.

19 “(d) EMPLOYEE ACCESS TO SALARY REDUCTION
 20 CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.—

21 “(1) IN GENERAL.—Every employer which does
 22 not maintain a qualified plan or arrangement for a
 23 calendar year shall provide a salary reduction ar-
 24 rangement for the calendar year which meets the re-
 25 quirements of paragraphs (3), (4) and (5).

1 “(2) QUALIFIED PLAN OR ARRANGEMENT.—For
2 purposes of this section, an employer is treated as
3 maintaining a qualified plan or arrangement for a
4 calendar year if the employer maintains for such
5 year a plan, contract, pension, or trust described in
6 subparagraph (A) or (B) of section 219(g)(5) or an
7 eligible deferred compensation plan (within the
8 meaning of section 457(b)) with respect to which
9 contributions are made, or benefits are accrued, for
10 service in such year.

11 “(3) SALARY REDUCTION ARRANGEMENT.—For
12 purposes of this section, the term ‘salary reduction
13 arrangement’ means a written arrangement of an
14 employer under which—

15 “(A) an employee eligible to participate in
16 the arrangement may elect to—

17 “(i) contribute to an individual retire-
18 ment plan established by or on behalf of
19 the employee by having the employer make
20 direct deposit payments to the plan by pay-
21 roll deduction, or

22 “(ii) receive the amounts directly as
23 cash compensation, and

24 “(B) no other contributions may be made
25 under the arrangement.

1 “(4) PARTICIPATION REQUIREMENTS.—

2 “(A) IN GENERAL.—The requirements of
3 this paragraph are met with respect to a salary
4 reduction arrangement for a year only if, under
5 the arrangement, all employees of the employer
6 are eligible to make the election under para-
7 graph (3)(A).

8 “(B) EXCLUDABLE EMPLOYEES.—An em-
9 ployer may exclude from the requirement under
10 paragraph (3) employees described in section
11 410(b)(3) and any employee who has not com-
12 pleted hours of service for the employer on a
13 regular basis during a period of at least 30 con-
14 secutive days during the calendar year.

15 “(5) ADMINISTRATIVE REQUIREMENTS.—The
16 requirements of this paragraph are met with respect
17 to any salary reduction arrangement if, under the
18 arrangement—

19 “(A) the employer must make the pay-
20 ments elected under paragraph (3)(A) not later
21 than the close of the 30-day period following
22 the last day of the month with respect to which
23 the contributions are to be made, or, if later,
24 the deadline under applicable rules and regula-

1 tions for the employer to deposit tax under sec-
2 tion 3102 for wages paid in that month,

3 “(B) an employee may elect to terminate
4 participation in the arrangement at any time
5 during the year, except that if an employee so
6 terminates, the arrangement may provide that
7 the employee may not elect to resume participa-
8 tion until the beginning of the next year,

9 “(C) each employee eligible to participate
10 may elect, during the 60-day period before the
11 beginning of any year (and the 60-day period
12 before the first day the employee is eligible to
13 participate), to participate in the arrangement,
14 or to modify the amounts subject to the ar-
15 rangement, for such year, and

16 “(D) immediately before the period for
17 which an election described in paragraph (3)(A)
18 may be made, the employer provides a notice to
19 each employee of the employee’s opportunity to
20 make the election and the maximum amount
21 which may be contributed to an individual re-
22 tirement plan on an annual basis.

23 “(6) EXCEPTION FOR CERTAIN SMALL EMPLOY-
24 ERS.—The requirements of this subsection shall not
25 apply for any calendar year to an employer which

1 had not more than 10 employees who received at
2 least \$5,000 of compensation from the employer for
3 the preceding calendar year.

4 “(7) USE OF DESIGNATED FINANCIAL INSTITU-
5 TION.—An employer shall not be treated as failing
6 to satisfy the requirements of this subsection or any
7 other provision of this title merely because the em-
8 ployer makes all contributions (or all contributions
9 on behalf of employees who do not specify an indi-
10 vidual retirement plan, trustee, or issuer to receive
11 the contributions) to individual retirement plans of
12 a designated trustee or issuer. The preceding sen-
13 tence shall not apply unless each participant is noti-
14 fied in writing that the participant’s balance may be
15 transferred without cost or penalty to another indi-
16 vidual retirement plan in accordance with subsection
17 (d)(3).

18 “(8) MODEL NOTICE.—The Secretary shall pro-
19 vide a model notice, written in a manner calculated
20 to be understandable to the average worker, that
21 employers may use to satisfy the requirement of
22 paragraphs (5)(D) and (7). Model notices shall be
23 provided in English, in Spanish, and in any other
24 language deemed appropriate by the Secretary.

1 “(e) SALARY REDUCTION CONTRIBUTIONS TREATED
2 LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL RETIRE-
3 MENT PLANS.—

4 “(1) TAX TREATMENT UNAFFECTED.—The fact
5 that a contribution to an individual retirement plan
6 is made on behalf of an employee under a salary re-
7 duction arrangement instead of being made directly
8 by the employee shall not affect the deductibility or
9 other income tax treatment of the contribution or of
10 other amounts under this title.

11 “(2) SALARY REDUCTION CONTRIBUTIONS
12 TAKEN INTO ACCOUNT.—Any contribution made on
13 behalf of an employee under a salary reduction ar-
14 rangement shall be taken into account in applying
15 the limitations on contributions to individual retire-
16 ment plans and the other provisions of this title ap-
17 plicable to individual retirement plans as if the con-
18 tribution had been made to the plan directly by the
19 employee.”.

20 (b) CREDIT FOR SMALL EMPLOYERS MAINTAINING
21 SALARY REDUCTION ARRANGEMENTS FACILITATING EM-
22 PLOYEE CONTRIBUTIONS TO INDIVIDUAL RETIREMENT
23 PLANS.—

24 (1) IN GENERAL.—Subpart D of part IV of
25 subchapter A of chapter 1 (relating to business re-

lated credits) is amended by adding at the end the following new section:

“SEC. 45G. SMALL EMPLOYER SALARY REDUCTION COSTS.

“(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible employer, the small employer salary reduction cost credit determined under this section for any taxable year is the amount determined under subsection (b).

“(b) AMOUNT OF CREDIT.—The amount of the credit determined under this section for any taxable year with respect to an eligible employer shall be—

“(1) \$200 for the taxable year which includes the date that the arrangement referred to in subsection (a) becomes effective, and

“(2) \$50 for each subsequent taxable year during which the arrangement is in effect.

“(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term ‘eligible employer’ means, with respect to any calendar year in which the taxable year begins, an employer which maintains a salary reduction arrangement meeting the requirements of section 4980G(d) and which did not maintain a qualified plan or arrangement (within the meaning of section 4980G(d)(2)) for the preceding 2 calendar years.”

1 (2) CREDIT ALLOWED AS PART OF GENERAL
 2 BUSINESS CREDIT.—Section 38(b) (defining current
 3 year business credit) is amended by striking “plus”
 4 at the end of paragraph (14), by striking the period
 5 at the end of paragraph (15) and inserting “, plus”,
 6 and by adding at the end the following new para-
 7 graph:

8 “(16) in the case of an eligible employer (as de-
 9 fined in section 45G(c)), the small employer salary
 10 reduction cost credit determined under section
 11 45G(a).”

12 (c) CLERICAL AMENDMENTS.—

13 (1) The table of sections for chapter 43 is
 14 amended by adding at the end the following new
 15 item:

“Sec. 4980G. Requirements for employers to provide employees
 access to salary reduction contributions to indi-
 vidual retirement plans.”.

16 (2) The table of sections for subpart D of part
 17 IV of subchapter A of chapter 1 is amended by add-
 18 ing at the end the following new item:

“Sec. 45G. Small employer salary reduction costs.”.

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years beginning after
 21 December 31, 2003.

1 **SEC. 404. CREDIT FOR QUALIFIED PENSION PLAN CON-**
 2 **TRIBUTIONS OF SMALL EMPLOYERS.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
 4 chapter A of chapter 1 (relating to business related cred-
 5 its), as amended by section 403, is amended by adding
 6 at the end the following new section:

7 **“SEC. 45H. SMALL EMPLOYER PENSION PLAN CONTRIBU-**
 8 **TIONS.**

9 “(a) GENERAL RULE.—For purposes of section 38,
 10 in the case of an eligible employer, the small employer pen-
 11 sion plan contribution credit determined under this section
 12 for any taxable year is an amount equal to 50 percent
 13 of the amount which would (but for subsection (f)(1)) be
 14 allowed as a deduction under section 404 for such taxable
 15 year for qualified employer contributions made to any
 16 qualified retirement plan on behalf of any employee who
 17 is not a highly compensated employee.

18 “(b) CREDIT LIMITED TO 3 YEARS.—The credit al-
 19 lowable by this section shall be allowed only with respect
 20 to the period of 3 taxable years beginning with the first
 21 taxable year for which a credit is allowable with respect
 22 to a plan under this section.

23 “(c) QUALIFIED EMPLOYER CONTRIBUTION.—For
 24 purposes of this section—

25 “(1) DEFINED CONTRIBUTION PLANS.—In the
 26 case of a defined contribution plan, the term ‘quali-

1 fied employer contribution’ means the amount of
 2 nonelective and matching contributions to the plan
 3 made by the employer on behalf of any employee
 4 who is not a highly compensated employee to the ex-
 5 tent such amount does not exceed 3 percent of such
 6 employee’s compensation from the employer for the
 7 year.

8 “(2) DEFINED BENEFIT PLANS.—In the case of
 9 a defined benefit plan, the term ‘qualified employer
 10 contribution’ means the amount of employer con-
 11 tributions to the plan made on behalf of any em-
 12 ployee who is not a highly compensated employee to
 13 the extent that the accrued benefit of such employee
 14 derived from employer contributions for the year
 15 does not exceed the equivalent (as determined under
 16 regulations prescribed by the Secretary and without
 17 regard to contributions and benefits under the Social
 18 Security Act) of 3 percent of such employee’s com-
 19 pensation from the employer for the year.

20 “(d) QUALIFIED RETIREMENT PLAN.—

21 “(1) IN GENERAL.—The term ‘qualified retire-
 22 ment plan’ means any plan described in section
 23 401(a) which includes a trust exempt from tax
 24 under section 501(a) if the plan meets—

1 “(A) the contribution requirements of
2 paragraph (2),

3 “(B) the vesting requirements of para-
4 graph (3), and

5 “(C) the distribution requirements of para-
6 graph (4).

7 “(2) CONTRIBUTION REQUIREMENTS.—

8 “(A) IN GENERAL.—The requirements of
9 this paragraph are met if, under the plan—

10 “(i) the employer is required to make
11 nonelective contributions of at least 1 per-
12 cent of compensation (or the equivalent
13 thereof in the case of a defined benefit
14 plan) for each employee who is not a high-
15 ly compensated employee who is eligible to
16 participate in the plan, and

17 “(ii) allocations of nonelective em-
18 ployer contributions, in the case of a de-
19 fined contribution plan, are either in equal
20 dollar amounts for all employees covered
21 by the plan or bear a uniform relationship
22 to the total compensation, or the basic or
23 regular rate of compensation, of the em-
24 ployees covered by the plan (and an equiv-

1 alent requirement is met with respect to a
2 defined benefit plan).

3 “(B) COMPENSATION LIMITATION.—The
4 compensation taken into account under sub-
5 paragraph (A) for any year shall not exceed the
6 limitation in effect for such year under section
7 401(a)(17).

8 “(3) VESTING REQUIREMENTS.—The require-
9 ments of this paragraph are met if the plan satisfies
10 the requirements of either of the following subpara-
11 graphs:

12 “(A) 3-YEAR VESTING.—A plan satisfies
13 the requirements of this subparagraph if an em-
14 ployee who has completed at least 3 years of
15 service has a nonforfeitable right to 100 percent
16 of the employee’s accrued benefit derived from
17 employer contributions.

18 “(B) 5-YEAR GRADED VESTING.—A plan
19 satisfies the requirements of this subparagraph
20 if an employee has a nonforfeitable right to a
21 percentage of the employee’s accrued benefit de-
22 rived from employer contributions determined
23 under the following table:

“Years of service:	The nonforfeitable percentage is:
1	20
2	40
3	60

“Years of service:	The nonforfeitable percentage is:
4	80
5	100.

1 “(4) DISTRIBUTION REQUIREMENTS.—In the
2 case of a profit-sharing or stock bonus plan, the re-
3 quirements of this paragraph are met if, under the
4 plan, qualified employer contributions are distribut-
5 able only as provided in section 401(k)(2)(B).

6 “(e) OTHER DEFINITIONS.—For purposes of this
7 section—

8 “(1) ELIGIBLE EMPLOYER.—

9 “(A) IN GENERAL.—The term ‘eligible em-
10 ployer’ means, with respect to any year, an em-
11 ployer which has no more than 20 employees
12 who received at least \$5,000 of compensation
13 from the employer for the preceding year.

14 “(B) REQUIREMENT FOR NEW QUALIFIED
15 EMPLOYER PLANS.—Such term shall not in-
16 clude an employer if, during the 3-taxable year
17 period immediately preceding the 1st taxable
18 year for which the credit under this section is
19 otherwise allowable for a qualified employer
20 plan of the employer, the employer or any mem-
21 ber of any controlled group including the em-
22 ployer (or any predecessor of either) established
23 or maintained a qualified employer plan with

1 respect to which contributions were made, or
2 benefits were accrued, for substantially the
3 same employees as are in the qualified employer
4 plan.

5 “(2) HIGHLY COMPENSATED EMPLOYEE.—The
6 term ‘highly compensated employee’ has the mean-
7 ing given such term by section 414(q) (determined
8 without regard to section 414(q)(1)(B)(ii)).

9 “(f) SPECIAL RULES.—

10 “(1) DISALLOWANCE OF DEDUCTION.—No de-
11 duction shall be allowed for that portion of the quali-
12 fied employer contributions paid or incurred for the
13 taxable year which is equal to the credit determined
14 under subsection (a).

15 “(2) ELECTION NOT TO CLAIM CREDIT.—This
16 section shall not apply to a taxpayer for any taxable
17 year if such taxpayer elects to have this section not
18 apply for such taxable year.

19 “(3) AGGREGATION RULES.—All persons treat-
20 ed as a single employer under subsection (a) or (b)
21 of section 52, or subsection (n) or (o) of section 414,
22 shall be treated as one person. All eligible employer
23 plans shall be treated as 1 eligible employer plan.

24 “(g) RECAPTURE OF CREDIT ON FORFEITED CON-
25 TRIBUTIONS.—If any accrued benefit which is forfeitable

1 by reason of subsection (d)(3) is forfeited, the employer's
 2 tax imposed by this chapter for the taxable year in which
 3 the forfeiture occurs shall be increased by 35 percent of
 4 the employer contributions from which such benefit is de-
 5 rived to the extent such contributions were taken into ac-
 6 count in determining the credit under this section.”.

7 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
 8 NESS CREDIT.—Section 38(b) (defining current year busi-
 9 ness credit), as amended by section 403, is amended by
 10 striking “plus” at the end of paragraph (15), by striking
 11 the period at the end of paragraph (16) and inserting “,
 12 plus”, and by adding at the end the following new para-
 13 graph:

14 “(17) in the case of an eligible employer (as de-
 15 fined in section 45H(e)), the small employer pension
 16 plan contribution credit determined under section
 17 45H(a).”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 39(d) is amended by adding at the
 20 end the following new paragraph:

21 “(11) NO CARRYBACK OF SMALL EMPLOYER
 22 PENSION PLAN CONTRIBUTION CREDIT BEFORE JAN-
 23 UARY 1, 2004.—No portion of the unused business
 24 credit for any taxable year which is attributable to
 25 the small employer pension plan contribution credit

1 determined under section 45H may be carried back
 2 to a taxable year beginning before January 1,
 3 2004.”.

4 (2) Subsection (c) of section 196 is amended by
 5 striking “and” at the end of paragraph (9), by strik-
 6 ing the period at the end of paragraph (10) and in-
 7 serting “, and”, and by adding at the end the fol-
 8 lowing new paragraph:

9 “(11) the small employer pension plan contribu-
 10 tion credit determined under section 45H(a).”.

11 (3) The table of sections for subpart D of part
 12 IV of subchapter A of chapter 1, as amended by sec-
 13 tion 403, is amended by adding at the end the fol-
 14 lowing new item:

“Sec. 45H. Small employer pension plan contributions.”.

15 (d) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to contributions paid or incurred
 17 in taxable years beginning after December 31, 2003.

18 **SEC. 405. ALTERNATIVE METHOD OF MEETING NON-**
 19 **DISCRIMINATION REQUIREMENTS FOR OPT-**
 20 **OUT PLANS.**

21 (a) IN GENERAL.—Section 401(k) (relating to cash
 22 or deferred arrangement) is amended by adding at the end
 23 the following new paragraph:

24 “(13) NONDISCRIMINATION REQUIREMENTS
 25 FOR OPT-OUT ARRANGEMENTS.—

1 “(A) IN GENERAL.—A cash or deferred ar-
2 rangement shall be treated as meeting the re-
3 quirements of paragraph (3)(A)(ii) if such ar-
4 rangement constitutes a negative election trust
5 (a ‘NET’).

6 “(B) NEGATIVE ELECTION TRUST.—For
7 purposes of this paragraph, the term ‘negative
8 election trust’ means an arrangement—

9 “(i) under which each employee eligi-
10 ble to participate in the arrangement is
11 treated as having elected to have the em-
12 ployer make elective contributions in an
13 amount equal to the uniform percentage
14 (not less than 3 percent) provided under
15 the arrangement unless the employee spe-
16 cifically elects not to have such contribu-
17 tions made, and

18 “(ii) which meets the other require-
19 ments of this paragraph.

20 “(C) PARTICIPATION.—An arrangement
21 meets the requirements of this subparagraph
22 for any year if, during the plan year or the pre-
23 ceding plan year, elective contributions de-
24 scribed in subparagraph (B)(i) are made on be-
25 half of at least 70 percent of employees other

1 than highly compensated employees eligible to
2 participate in the arrangement.

3 “(D) MATCHING CONTRIBUTIONS.—The
4 requirements of this subparagraph are met if,
5 under the arrangement, the employer makes
6 matching contributions on behalf of each em-
7 ployee who is not a highly compensated em-
8 ployee in an amount equal to 50 percent of the
9 elective contributions of the employee to the ex-
10 tent such elective contributions do not exceed 5
11 percent of compensation. The rules of clauses
12 (ii) and (iii) of paragraph (12)(B) shall apply
13 for purposes of this subparagraph.

14 “(E) WITHDRAWAL AND VESTING.—The
15 requirements of this subparagraph are met if
16 the requirements of subparagraphs (B) and (C)
17 of paragraph (2) are met with respect to all em-
18 ployer contributions (including matching con-
19 tributions) taken into account in determining
20 whether the requirements of subparagraph (B)
21 or (D) are met.

22 “(F) NOTICE REQUIREMENTS.—The re-
23 quirements of this subparagraph are met if
24 each employee eligible to participate in the ar-
25 rangement—

1 “(i) receives a notice explaining the
 2 employee’s right under the arrangement to
 3 elect not to have elective contributions
 4 made on the employee’s behalf, and

5 “(ii) has a reasonable period of time
 6 after receipt of such notice and before the
 7 first elective contribution is made to make
 8 such election.

9 The requirements of clauses (i) and (ii) of para-
 10 graph (12)(D) shall be met with respect to such
 11 notice.”.

12 (b) MATCHING CONTRIBUTIONS.—Section 401(m)
 13 (relating to nondiscrimination test for matching contribu-
 14 tions and employee contributions) is amended by redesign-
 15 ating paragraph (12) as paragraph (13) and by inserting
 16 after paragraph (11) the following new paragraph:

17 “(12) ALTERNATIVE METHOD FOR OPT-OUT
 18 PLANS.—

19 “(A) IN GENERAL.—A defined contribution
 20 plan shall be treated as meeting the require-
 21 ments of paragraph (2) with respect to match-
 22 ing contributions if the plan—

23 “(i) meets the contribution require-
 24 ments of subparagraphs (B)(i) and (D) of
 25 subsection (k)(13),

1 “(ii) meets the participation require-
 2 ments of subsection (k)(13)(C),

3 “(iii) meets the vesting and notice re-
 4 quirements of subparagraphs (E) and (F)
 5 of subsection (k)(13), and

6 “(iv) meets the requirements of
 7 clauses (i) and (ii) of paragraph (11)(B).

8 “(B) MATCHING CONTRIBUTIONS UNDER
 9 SECTION 403(b) PLANS.—An annuity contract
 10 under section 403(b) shall be treated as meet-
 11 ing the requirements of paragraph (2) with re-
 12 spect to matching contributions on account of
 13 an elective deferral described in section
 14 402(g)(3)(C) if such contract meets require-
 15 ments similar to the requirements under sub-
 16 paragraph (A).”.

17 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY
 18 PLANS.—Paragraph (4) of section 416(d) (relating to
 19 other special rules for top-heavy plans), as amended by
 20 section 104(g), is amended by adding at the end the fol-
 21 lowing new subparagraph:

22 “(J) NEGATIVE ELECTION TRUST.—The
 23 term ‘top-heavy plan’ shall not include a nega-
 24 tive election trust under section 401(k)(13).”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan years beginning after De-
 3 cember 31, 2003.

4 **SEC. 406. PROTECTION OF PARTICIPANTS DURING CON-**
 5 **VERSIONS TO CASH BALANCE OR OTHER HY-**
 6 **BRID DEFINED BENEFIT PLANS.**

7 (a) AMENDMENT TO INTERNAL REVENUE CODE.—
 8 Section 411(d)(6) of the Internal Revenue Code of 1986
 9 (relating to accrued benefit may not be decreased by
 10 amendment) is amended by adding at the end the fol-
 11 lowing new subparagraph:

12 “(F) TREATMENT OF CONVERSIONS TO
 13 CASH BALANCE OR OTHER HYBRID PLANS.—

14 “(i) IN GENERAL.—For purposes of
 15 subparagraph (A), an applicable plan
 16 amendment shall be treated as reducing
 17 the accrued benefit of a participant unless,
 18 under the terms of the plan as in effect
 19 after the amendment, any participant in
 20 the plan immediately before the amend-
 21 ment takes effect may elect to continue to
 22 accrue benefits in the same manner as
 23 under the terms of the plan in effect before
 24 the amendment.

1 “(ii) APPLICABLE PLAN AMEND-
2 MENT.—For purposes of this subpara-
3 graph—

4 “(I) IN GENERAL.—The term
5 ‘applicable plan amendment’ means
6 an amendment to a defined benefit
7 plan which has the effect of con-
8 verting the plan to a cash balance
9 plan.

10 “(II) SPECIAL RULE FOR CO-
11 ORDINATED BENEFITS.—If the bene-
12 fits of 2 or more defined benefit plans
13 established or maintained by an em-
14 ployer are coordinated in such a man-
15 ner as to have the effect of the adop-
16 tion of an amendment described in
17 subclause (I), the sponsor of the de-
18 fined benefit plan or plans providing
19 for such coordination shall be treated
20 as having adopted such a plan amend-
21 ment as of the date such coordination
22 begins.

23 “(III) MULTIPLE AMEND-
24 MENTS.—The Secretary shall issue
25 regulations to prevent the avoidance

1 of the purposes of this subparagraph
2 through the use of 2 or more plan
3 amendments rather than a single
4 amendment.

5 “(iii) CASH BALANCE PLAN.—For
6 purposes of this subparagraph—

7 “(I) IN GENERAL.—The term
8 ‘cash balance plan’ means a defined
9 benefit plan under which the accrued
10 benefit is determined as an amount
11 other than an annual benefit com-
12 mencing at normal retirement age.

13 “(II) REGULATIONS TO INCLUDE
14 SIMILAR OR OTHER HYBRID PLANS.—
15 The Secretary shall issue regulations
16 which provide that a defined benefit
17 plan (or any portion of such a plan)
18 which has an effect similar to a plan
19 described in subclause (I) shall be
20 treated as a cash balance plan. Such
21 regulations may provide that if a plan
22 sponsor represents in communications
23 to participants and beneficiaries that
24 a plan amendment results in a plan
25 being described in the preceding sen-

1 tence, such plan shall be treated as a
2 cash balance plan.

3 “(iv) COORDINATION WITH ACCRUAL
4 AND NONDISCRIMINATION RULES.—If, by
5 reason of an election under clause (i), a
6 participant is eligible to continue to accrue
7 benefits in the same manner as under the
8 terms of the plan in effect before the
9 amendment, the Secretary shall prescribe
10 regulations under which—

11 “(I) the plan shall be treated as
12 meeting the requirements of subpara-
13 graph (A), (B), or (C) of section
14 411(b)(1) if such requirements are
15 met separately with respect to each
16 benefit accrual formula under the
17 terms of the plan, and

18 “(II) the plan shall, subject to
19 such terms and conditions as may be
20 provided in such regulations, not be
21 treated as failing to meet the require-
22 ments of section 401(a)(4) merely be-
23 cause only participants as of the effec-
24 tive date of the amendment are so eli-
25 gible, except that this subclause shall

1 only apply if the plan met the require-
2 ments of section 401(a)(4) under the
3 terms of the plan as in effect before
4 the amendment.”.

5 (b) AMENDMENT TO ERISA.—Section 204(g) of the
6 Employee Retirement Income Security Act of 1974 (29
7 U.S.C. 1054(g)) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(6)(A) For purposes of paragraph (1), an applicable
10 plan amendment shall be treated as reducing the accrued
11 benefit of a participant unless, under the terms of the plan
12 as in effect after the amendment, any participant in the
13 plan immediately before the amendment takes effect may
14 elect to continue to accrue benefits in the same manner
15 as under the terms of the plan in effect before the amend-
16 ment.

17 “(B) For purposes of this paragraph—

18 “(i) The term ‘applicable plan amendment’
19 means an amendment to a defined benefit plan
20 which has the effect of converting the plan to a cash
21 balance plan.

22 “(ii) If the benefits of 2 or more defined benefit
23 plans established or maintained by an employer are
24 coordinated in such a manner as to have the effect
25 of the adoption of an amendment described in clause

1 (i), the sponsor of the defined benefit plan or plans
2 providing for such coordination shall be treated as
3 having adopted such a plan amendment as of the
4 date such coordination begins.

5 “(iii) The Secretary of the Treasury shall issue
6 regulations to prevent the avoidance of the purposes
7 of this paragraph through the use of 2 or more plan
8 amendments rather than a single amendment.

9 “(C) For purposes of this paragraph—

10 “(i) The term ‘cash balance plan’ means a de-
11 fined benefit plan under which the accrued benefit is
12 determined as an amount other than an annual ben-
13 efit commencing at normal retirement age.

14 “(ii) The Secretary of the Treasury shall issue
15 regulations which provide that a defined benefit plan
16 (or any portion of such a plan) which has an effect
17 similar to a plan described in clause (i) shall be
18 treated as a cash balance plan. Such regulations
19 may provide that if a plan sponsor represents in
20 communications to participants and beneficiaries
21 that a plan amendment results in a plan being de-
22 scribed in the preceding sentence, such plan shall be
23 treated as a cash balance plan.

24 “(D) If, by reason of an election under subparagraph
25 (A), a participant is eligible to continue to accrue benefits

1 in the same manner as under the terms of the plan in
 2 effect before the amendment, the Secretary shall prescribe
 3 regulations under which the plan shall be treated as meet-
 4 ing the requirements of subparagraph (A), (B), or (C) of
 5 section 204(b)(1) if such requirements are met separately
 6 with respect to each benefit formula under the terms.”.

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—The amendments made by
 9 this section shall apply to plan amendments taking
 10 effect on or after the date of the enactment of this
 11 Act.

12 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 13 GAINED PLANS.—In the case of a plan maintained
 14 pursuant to 1 or more collective bargaining agree-
 15 ments between employee representatives and 1 or
 16 more employers ratified by the date of the enact-
 17 ment of this Act, the amendments made by this sec-
 18 tion shall not apply to plan amendments taking ef-
 19 fect before the earlier of—

20 (A) the later of—

21 (i) the date on which the last of such
 22 collective bargaining agreements termi-
 23 nates (determined without regard to any
 24 extension thereof on or after such date of
 25 enactment), or

(ii) January 1, 2004, or

(B) January 1, 2005.

TITLE V—WOMEN’S PENSION PROTECTION

SEC. 501. SHORT TITLE.

This title may be cited as the “Women’s Pension Protection Act of 2003”.

Subtitle A—Spousal Consent Required for Distributions From Defined Contribution Plans

SEC. 511. APPLICATION OF JOINT AND SURVIVOR ANNUITY

RULES TO ALL DEFINED CONTRIBUTION PLANS.

(a) APPLICATION TO ALL DEFINED CONTRIBUTION PLANS.—

(1) AMENDMENTS TO ERISA.—

(A) IN GENERAL.—Section 205(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(a)) is amended by striking “to which this section applies”.

(B) CONFORMING AMENDMENTS.—

(i) Section 205(b) of such Act (29 U.S.C. 1055(b)) is amended to read as follows:

“(b)(1)(A) In the case of—

1 “(i) a tax credit employee stock ownership plan
2 (as defined in section 409(a) of the Internal Rev-
3 enue Code of 1986), or

4 “(ii) an employee stock ownership plan (as de-
5 fined in section 4975(e)(7) of such Code),

6 subsection (a) shall not apply to that portion of the em-
7 ployee’s accrued benefit to which the requirements of sec-
8 tion 409(h) of such Code apply.

9 “(B) Subparagraph (A) shall apply with respect to
10 any participant only if—

11 “(i) such plan provides that the participant’s
12 nonforfeitable accrued benefit (reduced by any secu-
13 rity interest held by the plan by reason of a loan
14 outstanding to such participant) is payable in full,
15 on the death of the participant, to the participant’s
16 surviving spouse (or, if there is no surviving spouse
17 or the surviving spouse consents in the manner re-
18 quired under subsection (c)(2), to a designated bene-
19 ficiary),

20 “(ii) such participant does not elect the pay-
21 ment of benefits in the form of a life annuity, and

22 “(iii) with respect to such participant, such
23 plan is not a direct or indirect transferee (in a
24 transfer after December 31, 1984) of a plan to
25 which, at the time of the transfer, subsection (a) ap-

1 plied (or to which this clause applied with respect to
2 the participant).

3 Clause (iii) shall apply only with respect to the transferred
4 assets (and income therefrom) if the plan separately ac-
5 counts for such assets and any income therefrom. A plan
6 shall not be treated as failing to meet the requirements
7 of this subparagraph merely because the plan provides
8 that benefits will not be payable to the surviving spouse
9 of the participant unless the participant and such spouse
10 had been married throughout the 1-year period ending on
11 the earlier of the participant's annuity starting date or
12 the date of the participant's death.

13 “(2) This section shall not apply to a plan which the
14 Secretary of the Treasury or his delegate has determined
15 is a plan described in section 404(c) of the Internal Rev-
16 enue Code of 1986 (or a continuation thereof) in which
17 participation is substantially limited to individuals who,
18 before January 1, 1976, ceased employment covered by
19 the plan.”.

20 (ii) Section 205(e)(2) of such Act (20
21 U.S.C. 1055(e)(2)) is amended—

22 (I) by striking “individual ac-
23 count plan or participant described in
24 subparagraph (B) or (C) of subsection
25 (b)(1)” and inserting “individual ac-

1 count plan to which this section ap-
 2 plies, or any participant described in
 3 subsection (b)(1)(B)”, and

4 (II) by striking “50 percent of”.

5 (2) AMENDMENTS TO INTERNAL REVENUE
 6 CODE.—

7 (A) IN GENERAL.—Section 401(a)(11)(A)
 8 of the Internal Revenue Code of 1986 (relating
 9 to requirement of joint and survivor annuity
 10 and preretirement survivor annuity) is amended
 11 by striking the matter preceding clause (i) and
 12 inserting:

13 “(A) IN GENERAL.—Except as provided in
 14 section 417 and subparagraph (B), a trust
 15 forming part of a plan shall not constitute a
 16 qualified trust under this section unless such
 17 plan provides—”.

18 (B) CONFORMING AMENDMENTS.—

19 (i) Section 401(a)(11) of such Code is
 20 amended by striking subparagraphs (B),
 21 (C), and (D) and inserting the following
 22 new subparagraphs:

23 “(B) EXCEPTION FOR CERTAIN ESOP BEN-
 24 EFITS.—

25 “(i) IN GENERAL.—In the case of—

1 “(I) a tax credit employee stock
2 ownership plan (as defined in section
3 409(a)), or

4 “(II) an employee stock owner-
5 ship plan (as defined in section
6 4975(e)(7)),

7 subparagraph (A) shall not apply to that
8 portion of the employee’s accrued benefit
9 to which the requirements of section
10 409(h) apply.

11 “(ii) NONFORFEITABLE BENEFIT
12 MUST BE PAID IN FULL, ETC.—In the case
13 of any participant, clause (i) shall apply
14 only if—

15 “(I) such plan provides that the
16 participant’s nonforfeitable accrued
17 benefit (reduced by any security inter-
18 est held by the plan by reason of a
19 loan outstanding to such participant)
20 is payable in full, on the death of the
21 participant, to the participant’s sur-
22 viving spouse (or, if there is no sur-
23 viving spouse or the surviving spouse
24 consents in the manner required

1 under section 417(a)(2), to a des-
 2 ignated beneficiary),

3 “(II) such participant does not
 4 elect the payment of benefits in the
 5 form of a life annuity, and

6 “(III) with respect to such par-
 7 ticipant, such plan is not a direct or
 8 indirect transferee (in a transfer after
 9 December 31, 1984) of a plan to
 10 which, at the time of the transfer,
 11 subparagraph (A) applied (or to which
 12 this subclause applied with respect to
 13 the participant).

14 Subclause (III) shall apply only with re-
 15 spect to the transferred assets (and income
 16 therefrom) if the plan separately accounts
 17 for such assets and any income therefrom.

18 “(C) SPECIAL RULE WHERE PARTICIPANT
 19 AND SPOUSE MARRIED LESS THAN 1 YEAR.—A
 20 plan shall not be treated as failing to meet the
 21 requirements of subparagraph (B)(ii) merely
 22 because the plan provides that benefits will not
 23 be payable to the surviving spouse of the partic-
 24 ipant unless the participant and such spouse
 25 had been married throughout the 1-year period

ending on the earlier of the participant’s annuity starting date or the date of the participant’s death.”.

(ii) Section 401(a)(11) of such Code is amended by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively.

(iii) Section 417(c)(2) of such Code is amended—

(I) by striking “defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B)” and inserting “defined contribution plan to which section 401(a)(11) applies, or any participant described in section 401(a)(11)(B)(ii),”; and

(II) by striking “50 percent of”.

(b) SPECIAL RULES RELATING TO DEFINED CONTRIBUTION PLANS.—

(1) AMENDMENTS TO ERISA.—

(A) LOANS.—Section 205(c)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(4)) is amended by adding at the end the following flush sentence:

1 “This paragraph shall not apply to an individual account
 2 plan other than a plan which is subject to the funding
 3 standards of section 302.”.

4 (B) HARDSHIP WITHDRAWALS.—Section
 5 205(c) of such Act (29 U.S.C. 1055(c)) is
 6 amended by adding at the end the following
 7 new paragraph:

8 “(9) Nothing in this section shall be construed as re-
 9 quiring an individual account plan to obtain the consent
 10 of the spouse of a participant before making a hardship
 11 distribution to the participant.”.

12 (C) PAYMENTS IN LIEU OF ANNUITY.—
 13 Section 205 of such Act (29 U.S.C. 1055) is
 14 amended by redesignating subsection (l) as sub-
 15 section (m) and by inserting after subsection
 16 (k) the following new subsection:

17 “(l)(1) For purposes of this section, an individual ac-
 18 count plan required to provide a qualified joint and sur-
 19 vivor annuity or a qualified preretirement survivor annuity
 20 shall be treated as providing—

21 “(A) a qualified joint and survivor annuity if
 22 the plan provides that the account balance of the
 23 participant to which the participant had a non-
 24 forfeitable right (within the meaning of section 203)
 25 will be distributed in a series of periodic payments

1 (determined in accordance with tables prescribed by
2 the Secretary of the Treasury) over the joint life ex-
3 pectancy of the participant and the participant's
4 spouse, and

5 “(B) a qualified preretirement survivor annuity
6 if the plan provides that the account balance of the
7 participant (as of the date of death) to which the
8 participant had a nonforfeitable right (as so defined)
9 will be distributed to the surviving spouse, at the op-
10 tion of the spouse, in either such a series of periodic
11 payments over the life expectancy of the surviving
12 spouse or any other form of benefit payment that
13 the plan provides.

14 A plan shall not be treated as failing to meet the require-
15 ments of subparagraph (A) because the plan provides that
16 a participant may, with the consent of the spouse, elect
17 at any time to have the plan pay all of the remaining por-
18 tion of the account balance in any other form of benefit
19 payment that the plan provides.

20 “(2) In the case of a termination of an individual ac-
21 count plan that provides for payments described in para-
22 graph (1), such plan shall be treated as meeting the re-
23 quirements of paragraph (1) only if, for each participant
24 or surviving spouse eligible to receive such payments who
25 is not paid the remaining account balance in a lump sum,

1 the plan administrator purchases from an insurer an irrev-
 2 ocable commitment to provide—

3 “(A) the payments described in paragraph (1),

4 or

5 “(B) either—

6 “(i) a qualified joint and survivor annuity

7 (and, if applicable, a qualified preretirement

8 survivor annuity) in the case of a participant,

9 or

10 “(ii) a single life annuity or qualified pre-

11 retirement survivor annuity, whichever is appli-

12 cable, in the case of a surviving spouse of a

13 participant.

14 “(3) The requirements of paragraph (2) are met with

15 respect to a purchase only if, within a reasonable time

16 after the effective date of the purchase, the individual enti-

17 tled to payments from the insurer is provided a copy of

18 the insurance contract or a certificate showing the insur-

19 er’s name and address and clearly stating the insurer’s

20 obligation to provide the required payments.”.

21 (D) CONFORMING AMENDMENT.—Section

22 206 of such Act (29 U.S.C. 1056) is amended

23 by adding at the end the following:

24 “(g) FINAL DISTRIBUTIONS FROM TERMINATED IN-

25 DIVIDUAL ACCOUNT PLANS.—In the case of an individual

1 account plan which provides for payments described in
 2 section 205(l)(1), the plan shall provide that, upon termi-
 3 nation of such plan, benefits of married participants and
 4 surviving spouses shall be paid in accordance with section
 5 205(l)(2).”.

6 (2) AMENDMENTS TO INTERNAL REVENUE
 7 CODE.—

8 (A) LOANS.—Section 417(a)(4) of the In-
 9 ternal Revenue Code of 1986 is amended by
 10 adding at the end the following flush sentence:
 11 “This paragraph shall not apply to a defined con-
 12 tribution plan other than a plan which is subject to
 13 the funding standards of section 412.”

14 (B) HARDSHIP WITHDRAWALS.—Section
 15 417(a) of such Code is amended by adding at
 16 the end the following new paragraph:

17 “(8) HARDSHIP DISTRIBUTIONS.—Nothing in
 18 this section or section 401(a)(11) shall be construed
 19 as requiring a defined contribution plan to obtain
 20 the consent of the spouse of a participant before
 21 making a hardship distribution to the participant.”.

22 (C) PAYMENTS IN LIEU OF ANNUITY.—
 23 Section 417 of such Code (relating to defini-
 24 tions and special rules for purposes of minimum

1 survivor annuity requirements) is amended by
 2 adding at the end the following new subsection:

3 “(g) SPECIAL RULES FOR DEFINED CONTRIBUTION
 4 PLANS.—For purposes of this section and section
 5 401(a)(11)—

6 “(1) PAYMENTS IN LIEU OF ANNUITIES.—A de-
 7 fined contribution plan required to provide a quali-
 8 fied joint and survivor annuity or a qualified pre-
 9 retirement survivor annuity shall be treated as pro-
 10 viding—

11 “(A) a qualified joint and survivor annuity
 12 if the plan provides that the account balance of
 13 the participant to which the participant had a
 14 nonforfeitable right (within the meaning of sec-
 15 tion 411(a)) will be distributed in a series of
 16 periodic payments (determined in accordance
 17 with tables prescribed by the Secretary) over
 18 the joint life expectancy of the participant and
 19 the participant’s spouse, and

20 “(B) a qualified preretirement survivor an-
 21 nuity if the plan provides that the account bal-
 22 ance of the participant (as of the date of death)
 23 to which the participant had a nonforfeitable
 24 right (as so defined) will be distributed to the
 25 surviving spouse, at the option of the spouse, in

1 either such a series of periodic payments over
 2 the life expectancy of the surviving spouse or
 3 any other form of benefit payment that the plan
 4 provides.

5 A plan shall not be treated as failing to meet the re-
 6 quirements of subparagraph (A) because the plan
 7 provides that a participant may, with the consent of
 8 the spouse, elect at any time to have the plan pay
 9 all of the remaining portion of the account balance
 10 in any other form of benefit payment that the plan
 11 provides.

12 “(2) TERMINATING PLANS.—In the case of a
 13 termination of a defined contribution plan that pro-
 14 vides for payments described in paragraph (1), such
 15 plan shall be treated as meeting the requirements of
 16 paragraph (1) only if, for each participant or sur-
 17 viving spouse eligible to receive such payments who
 18 is not paid the remaining account balance in a lump
 19 sum, the plan administrator purchases from an in-
 20 surer an irrevocable commitment to provide—

21 “(A) the payments described in paragraph
 22 (1), or

23 “(B) either—

24 “(i) a qualified joint and survivor an-
 25 nuity (and, if applicable, a qualified pre-

1 retirement survivor annuity) in the case of
2 a participant, or

3 “(ii) a single life annuity or qualified
4 preretirement survivor annuity, whichever
5 is applicable, in the case of a surviving
6 spouse of a participant.

7 “(3) NOTICE.—The requirements of paragraph
8 (2) are met with respect to a purchase only if, with-
9 in a reasonable time after the effective date of the
10 purchase, the individual entitled to payments from
11 the insurer is provided a copy of the insurance con-
12 tract or a certificate showing the insurer’s name and
13 address and clearly stating the insurer’s obligation
14 to provide the required payments.”.

15 (D) CONFORMING AMENDMENT.—Section
16 401(a) of such Code (relating to requirements
17 for a qualified trust) is amended by inserting
18 after paragraph (34) the following new para-
19 graph:

20 “(35) FINAL DISTRIBUTIONS FROM TERMI-
21 NATED DEFINED CONTRIBUTION PLANS.—In the
22 case of a defined contribution plan which provides
23 for payments described in section 417(g)(1), a trust
24 forming part of such plan shall not be treated as
25 failing to constitute a qualified trust under this sec-

1 tion merely because the pension plan of which such
 2 trust is a part pays, upon its termination, benefits
 3 in accordance with section 417(g)(2).”.

4 (c) TRANSFERS BETWEEN PLANS.—

5 (1) AMENDMENT TO ERISA.—Section 205(c) of
 6 the Employee Retirement Income Security Act of
 7 1974 (29 U.S.C. 1055(c)), as amended by this title,
 8 is amended by adding at the end the following new
 9 paragraph:

10 “(10) Nothing in this section shall be treated as re-
 11 quiring a plan to obtain the consent of the spouse of the
 12 participant before making a direct trustee-to-trustee
 13 transfer of any portion of the balance to the credit of the
 14 participant to another pension plan if the other plan is
 15 a plan to which this section applies.”.

16 (2) AMENDMENT TO INTERNAL REVENUE
 17 CODE.—Section 417(a) of the Internal Revenue
 18 Code of 1986, as amended by this title, is amended
 19 by adding at the end the following new paragraph:

20 “(9) TRANSFERS.—Nothing in this section or
 21 section 401(a)(11) shall be treated as requiring a
 22 plan to obtain the consent of the spouse of the par-
 23 ticipant before making a direct trustee-to-trustee
 24 transfer of any portion of the balance to the credit
 25 of the participant to another plan if the other plan

1 is a plan to which this section and section
2 401(a)(11) apply.”

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall apply to plan years beginning after December
7 31, 2003.

8 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
9 GAINED PLANS.—In the case of a plan maintained
10 pursuant to 1 or more collective bargaining agree-
11 ments between employee representatives and 1 or
12 more employers ratified on or before the date of the
13 enactment of this Act, the amendments made by this
14 section shall not, in the case of employees covered by
15 any such agreement, apply to plan years beginning
16 before the earlier of—

17 (A) the later of—

18 (i) January 1, 2004, or

19 (ii) the date on which the last of such
20 collective bargaining agreements termi-
21 nates (determined without regard to any
22 extension thereof after the date of enact-
23 ment of this Act), or

24 (B) January 1, 2005.

1 (3) 1 HOUR OF SERVICE REQUIREMENT.—The
 2 amendments made by this section shall apply only in
 3 the case of participants who have at least 1 hour of
 4 service under the plan on or after the date of the en-
 5 actment of this Act or who have at least 1 hour of
 6 paid leave on or after such date.

7 **Subtitle B—Division of Pension** 8 **Benefits Upon Divorce**

9 **SEC. 521. TREATMENT OF SUBSEQUENT QUALIFIED DOMES-** 10 **TIC RELATIONS ORDERS.**

11 (a) AMENDMENT TO ERISA.—Section 206(d)(3)(B)
 12 of the Employee Retirement Income Security Act of 1974
 13 (29 U.S.C. 1056(d)(3)(B)) is amended by adding at the
 14 end the following flush sentence:

15 “A domestic relations order shall be treated as a
 16 qualified domestic relations order even if it is issued
 17 after, or revises, another domestic relations order,
 18 but, subject to subparagraph (H), only with respect
 19 to amounts payable after the date the order is
 20 issued.”

21 (b) AMENDMENT TO INTERNAL REVENUE CODE.—
 22 Section 414(p)(1)(A) of the Internal Revenue Code of
 23 1986 is amended by adding at the end the following flush
 24 sentence:

1 “A domestic relations order shall be treated as
2 a qualified domestic relations order even if it is
3 issued after, or revises, another domestic rela-
4 tions order, but, subject to paragraph (7), only
5 with respect to amounts payable after the date
6 the order is issued.”

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to transfers made after December
9 31, 2003.

10 **SEC. 522. FORMER SPOUSES TREATED AS SURVIVING**
11 **SPOUSES IN CERTAIN CASES.**

12 (a) AMENDMENT TO ERISA.—Section 205 of the
13 Employee Retirement Income Security Act of 1974 (29
14 U.S.C. 1055), as amended by this Act, is amended by re-
15 designating subsection (m) as subsection (n) and by in-
16 serting after subsection (l) the following new subsection:

17 “(m)(1) For purposes of this section, a former spouse
18 to whom this subsection applies shall, upon the death of
19 the participant to whom the former spouse was married,
20 be entitled to receive a qualified joint and survivor annuity
21 or qualified preretirement survivor annuity in the same
22 manner, and to the same extent, as if the former spouse
23 were the surviving spouse of the participant.

24 “(2) This subsection applies to a former spouse of
25 a participant if—

1 “(A) the former spouse was married to the par-
2 ticipant for at least 1 year,

3 “(B) an election by the former spouse to waive
4 the benefits of this section was not in effect at the
5 time of the dissolution of the marriage,

6 “(C) there is no domestic relations order which
7 specifically provides that the survivor benefits under
8 the plan were considered by the participant and the
9 former spouse and that the survivor benefits were
10 disposed of, and

11 “(D) the requirements of paragraph (3) are
12 met with respect to the participant.

13 “(3)(A) The requirements of this paragraph are met
14 with respect to a participant if the participant did not at
15 any time after dissolution of the marriage to the former
16 spouse—

17 “(i) remarry, or

18 “(ii) make a subsequent beneficiary designation.

19 “(B) A participant shall not be treated as having
20 made a subsequent beneficiary designation under subpara-
21 graph (A)(ii) if, at the time of the death of the partici-
22 pant—

23 “(i) the participant had accepted a reduction in
24 an annuity in order to provide a qualified joint and
25 survivor annuity under this section, or

1 “(ii) the participant was eligible for a fully sub-
 2 sidized annuity described in subsection (c)(5) which
 3 provides a qualified joint and survivor annuity or
 4 qualified preretirement survivor annuity.

5 “(4) This subsection shall not apply to a former
 6 spouse unless the spouse notifies the plan of the spouse’s
 7 eligibility under this subsection and provides such infor-
 8 mation as is necessary to establish such eligibility.”

9 (b) AMENDMENT TO INTERNAL REVENUE CODE.—
 10 Section 417 of the Internal Revenue Code of 1986 (relat-
 11 ing to definitions and special rules for purposes of min-
 12 imum survivor annuity requirements), as amended by this
 13 title, is amended by adding at the end the following new
 14 subsection:

15 “(h) TREATMENT OF CERTAIN FORMER SPOUSES.—

16 “(1) IN GENERAL.—For purposes of this sec-
 17 tion and section 401(a)(11), a former spouse to
 18 whom this subsection applies shall, upon the death
 19 of the participant to whom the former spouse was
 20 married, be entitled to receive a qualified joint and
 21 survivor annuity or qualified preretirement survivor
 22 annuity in the same manner, and to the same ex-
 23 tent, as if the former spouse were the surviving
 24 spouse of the participant.

1 “(2) APPLICATION.—This subsection applies to
2 a former spouse of a participant if—

3 “(A) the former spouse was married to the
4 participant for at least 1 year,

5 “(B) an election by the former spouse to
6 waive the benefits of this section and section
7 401(a)(11) was not in effect at the time of the
8 dissolution of the marriage,

9 “(C) there is no domestic relations order
10 which specifically provides that the survivor
11 benefits under the plan were considered by the
12 participant and the former spouse and that the
13 survivor benefits were disposed of, and

14 “(D) the requirements of paragraph (3)
15 are met with respect to the participant.

16 “(3) PARTICIPANT REQUIREMENTS.—

17 “(A) IN GENERAL.—The requirements of
18 this paragraph are met with respect to a partic-
19 ipant if the participant did not at any time
20 after dissolution of the marriage to the former
21 spouse—

22 “(i) remarry, or

23 “(ii) make a subsequent beneficiary
24 designation.

1 “(B) SPECIAL RULES.—A participant shall
 2 not be treated as having made a subsequent
 3 beneficiary designation under subparagraph
 4 (A)(ii) if, at the time of the death of the partic-
 5 ipant—

6 “(i) the participant had accepted a re-
 7 duction in an annuity in order to provide
 8 a qualified joint and survivor annuity
 9 under this section, or

10 “(ii) the participant was eligible for a
 11 fully subsidized annuity described in sub-
 12 section (c)(5) which provides a qualified
 13 joint and survivor annuity or qualified pre-
 14 retirement survivor annuity.

15 “(4) NOTICE.—This subsection shall not apply
 16 to a former spouse unless the spouse notifies the
 17 plan of the spouse’s eligibility under this subsection
 18 and provides such information as is necessary to es-
 19 tablish such eligibility.”

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided in para-
 22 graph (2), the amendments made by this section
 23 shall apply to benefits which first become payable
 24 (without regard to when the participant died) in
 25 plan years beginning after December 31, 2003.

1 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
2 GAINED PLANS.—In the case of a plan maintained
3 pursuant to 1 or more collective bargaining agree-
4 ments between employee representatives and 1 or
5 more employers ratified on or before the date of the
6 enactment of this Act, the amendments made by this
7 section shall not, in the case of employees covered by
8 any such agreement, apply to benefits which first be-
9 come payable (without regard to when the partici-
10 pant died) in plan years beginning before the earlier
11 of—

12 (A) the later of—

13 (i) January 1, 2004, or

14 (ii) the date on which the last of such
15 collective bargaining agreements termi-
16 nates (determined without regard to any
17 extension thereof after the date of enact-
18 ment of this Act), or

19 (B) January 1, 2005.

1 **Subtitle C—Protection of Rights of**
 2 **Former Spouses to Pension Ben-**
 3 **efits Under Certain Government**
 4 **and Government-Sponsored Re-**
 5 **tirement Programs**

6 **CHAPTER 1—CIVIL SERVICE RETIREMENT**

7 **SEC. 531. SURVIVOR ANNUITIES FOR WIDOWS, WIDOWERS,**
 8 **AND FORMER SPOUSES OF FEDERAL EM-**
 9 **PLOYEES WHO DIE BEFORE ATTAINING AGE**
 10 **FOR DEFERRED ANNUITY UNDER CIVIL**
 11 **SERVICE RETIREMENT SYSTEM.**

12 (a) BENEFITS FOR WIDOW OR WIDOWER.—Section
 13 8341(f) of title 5, United States Code, is amended—

14 (1) in the matter preceding paragraph (1)—

15 (A) by inserting “a former employee sepa-
 16 rated from the service with title to deferred an-
 17 nuity from the Fund dies before having estab-
 18 lished a valid claim for annuity and is survived
 19 by a spouse, or if” before “a Member”; and

20 (B) by inserting “of such former employee
 21 or Member” after “the surviving spouse”;

22 (2) in paragraph (1)—

23 (A) by inserting “former employee or” be-
 24 fore “Member commencing”; and

1 (B) by inserting “former employee or” be-
 2 fore “Member dies”; and

3 (3) in the undesignated sentence following para-
 4 graph (2)—

5 (A) in the matter preceding subparagraph
 6 (A), by inserting “former employee or” before
 7 “Member”; and

8 (B) in subparagraph (B), by inserting
 9 “former employee or” before “Member”.

10 (b) BENEFITS FOR FORMER SPOUSE.—Section
 11 8341(h) of title 5, United States Code, is amended—

12 (1) in paragraph (1), by adding after the first
 13 sentence “Subject to paragraphs (2) through (5) of
 14 this subsection, a former spouse of a former em-
 15 ployee who dies after having separated from the
 16 service with title to a deferred annuity under section
 17 8338(a) but before having established a valid claim
 18 for annuity is entitled to a survivor annuity under
 19 this subsection, if and to the extent expressly pro-
 20 vided for in an election under section 8339(j)(3) of
 21 this title, or in the terms of any decree of divorce
 22 or annulment or any court order or court-approved
 23 property settlement agreement incident to such de-
 24 cree.”; and

25 (2) in paragraph (2)—

1 (A) in subparagraph (A)(ii), by striking
 2 “or annuitant,” and inserting “annuitant, or
 3 former employee”; and

4 (B) in subparagraph (B)(iii), by inserting
 5 “former employee or” before “Member”.

6 (c) PROTECTION OF SURVIVOR BENEFIT RIGHTS.—
 7 Section 8339(j)(3) of title 5, United States Code, is
 8 amended by inserting at the end the following:

9 “The Office shall provide by regulation for the appli-
 10 cation of this subsection to the widow, widower, or sur-
 11 viving former spouse of a former employee who dies after
 12 having separated from the service with title to a deferred
 13 annuity under section 8338(a) but before having estab-
 14 lished a valid claim for annuity.”

15 (d) EFFECTIVE DATE.—The amendments made by
 16 this section shall take effect on the date of the enactment
 17 of this Act and shall apply only in the case of a former
 18 employee who dies on or after such date.

19 **SEC. 532. COURT ORDERS RELATING TO FEDERAL RETIRE-**
 20 **MENT BENEFITS FOR FORMER SPOUSES OF**
 21 **FEDERAL EMPLOYEES.**

22 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

23 (1) IN GENERAL.—Section 8345(j) of title 5,
 24 United States Code, is amended—

1 (A) by redesignating paragraph (3) as
 2 paragraph (4); and

3 (B) by inserting after paragraph (2) the
 4 following:

5 “(3) Payment to a person under a court decree, court
 6 order, property settlement, or similar process referred to
 7 under paragraph (1) shall include payment to a former
 8 spouse of the employee, Member, or annuitant.”

9 (2) LUMP-SUM BENEFITS.—Section 8342 of
 10 title 5, United States Code, is amended—

11 (A) in subsection (c), by striking “Lump-
 12 sum benefits” and inserting “Subject to sub-
 13 section (j), lump-sum benefits”; and

14 (B) in subsection (j)(1)(A), by striking
 15 “the lump-sum credit under subsection (a)” and
 16 inserting “any lump-sum credit or lump-sum
 17 benefit under this section”.

18 (b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—
 19 Section 8467 of title 5, United States Code, is amended—

20 (1) by redesignating subsection (c) as sub-
 21 section (d); and

22 (2) by inserting after subsection (b) the fol-
 23 lowing:

24 “(c) Payment to a person under a court decree, court
 25 order, property settlement, or similar process referred to

1 under subsection (a) shall include payment to a former
 2 spouse of the employee, Member, or annuitant.”

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall take effect on the date of the enactment
 5 of this Act.

6 **SEC. 533. INTEREST ON AMOUNTS PAID FOR CERTAIN CIVIL**
 7 **SERVICE ANNUITY BENEFITS WRONGFULLY**
 8 **DENIED.**

9 (a) IN GENERAL.—Chapter 77 of title 5, United
 10 States Code, is amended by adding at the end the fol-
 11 lowing:

12 **“§ 7704. Interest on amounts paid for certain annuity**
 13 **benefits wrongfully denied**

14 “(a) In the case of an individual who, on the basis
 15 of a timely appeal to the Merit Systems Protection Board
 16 under section 8347(d) or 8461(e), or petition for judicial
 17 review under section 7703 from a final order or decision
 18 of the Board in any such appeal, is found by the relevant
 19 authority—

20 “(1) to have been affected by an erroneous ap-
 21 plication or interpretation of subchapter III of chap-
 22 ter 83, chapter 84, or any other provision of law (or
 23 any rule or regulation relating thereto), and

24 “(2) to be entitled to receive an amount equal
 25 to all or any part of an annuity not paid to such in-

1 dividual as a result of such erroneous application or
 2 interpretation,
 3 the amount under paragraph (2) may, in the discretion
 4 of such authority, be made payable with interest.

5 “(b) Any such interest—

6 “(1) shall be computed in such manner as the
 7 Merit Systems Protection Board or the court (as the
 8 case may be) considers appropriate; and

9 “(2) shall be payable out of the Civil Service
 10 Retirement and Disability Fund.

11 “(c) In this section, the term ‘annuity’ means any
 12 annuity (including a survivor annuity) payable out of the
 13 Civil Service Retirement and Disability Fund.”

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 8348(a)(1)(A) of title 5, United
 16 States Code, is amended by striking “Fund;” and
 17 inserting “Fund (including any interest payable
 18 under section 7704);”

19 (2) The table of sections for chapter 77 of title
 20 5, United States Code, is amended by adding at the
 21 end the following:

“7704. Interest on amounts paid for certain annuity benefits wrongfully denied.”.

1 **SEC. 534. INCOME AVERAGING OF CORRECTED CIVIL SERV-**
 2 **ICE ANNUITY BENEFIT PAYMENTS.**

3 (a) IN GENERAL.—Part I of subchapter Q of chapter
 4 1 of the Internal Revenue Code of 1986 (relating to in-
 5 come averaging) is amended by inserting after section
 6 1301 the following:

7 **“SEC. 1302. AVERAGING OF CORRECTED CIVIL SERVICE AN-**
 8 **NUITY BENEFIT PAYMENTS.**

9 “(a) IN GENERAL.—Unless the taxpayer elects not
 10 to have this section apply for a taxable year, any corrected
 11 civil service annuity benefit payment includible in gross
 12 income for such taxable year (without regard to this sec-
 13 tion) shall be so included ratably over the 5-taxable year
 14 period beginning with such taxable year.

15 “(b) CORRECTED CIVIL SERVICE ANNUITY BENEFIT
 16 PAYMENT.—For purposes of subsection (a), the term ‘cor-
 17 rected civil service annuity benefit payment’ means with
 18 respect to an individual the sum of—

19 “(1) the lump sum payment awarded by reason
 20 of a court order, or decision of the Merit Systems
 21 Protection Board, under which the individual is enti-
 22 tled to receive an amount equal to all or any part
 23 of an annuity not paid to the individual as a result
 24 of an erroneous application or interpretation of sub-
 25 chapter III of chapter 83 or chapter 84 of title 5,

1 United States Code, or any other provision of law
 2 (or any rule or regulation relating thereto), plus

3 “(2) interest on the amount described in para-
 4 graph (1) awarded under section 7704 of title 5,
 5 United States Code.

6 “(c) ANNUITY.—For purposes of subsection (b), the
 7 term ‘annuity’ has the meaning given to such term by sec-
 8 tion 7704(c) of title 5, United States Code.

9 “(d) FINALITY OF ELECTION.—An election under
 10 subsection (a) with respect to a corrected civil service an-
 11 nuity benefit payment for a taxable year may not be
 12 changed after the due date of the return for such taxable
 13 year.”

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 for part I of subchapter Q of chapter 1 of such Code is
 16 amended by inserting after the item relating to section
 17 1301 the following:

“Sec. 1302. Averaging of corrected civil service annuity benefit
 payments.”

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to payments received after Decem-
 20 ber 31, 2003.

1 **SEC. 535. ORDER OF PRECEDENCE FOR DISPOSITION OF**
 2 **AMOUNTS REMAINING IN THE THRIFT SAV-**
 3 **INGS ACCOUNT OF A FEDERAL EMPLOYEE**
 4 **(OR FORMER EMPLOYEE) WHO DIES BEFORE**
 5 **MAKING AN EFFECTIVE ELECTION CONTROL-**
 6 **LING SUCH DISPOSITION.**

7 (a) IN GENERAL.—Section 8433(e) of title 5, United
 8 States Code, is amended—

9 (1) by striking “(e)” and inserting “(e)(1)”;

10 (2) by striking all that follows “paid” and in-
 11 serting “in accordance with paragraph (2).”; and

12 (3) by adding at the end the following:

13 “(2)(A) An amount under paragraph (1) shall be paid
 14 in a manner consistent with the provisions of section
 15 8424(d), except that, in applying the order of precedence
 16 under such provisions—

17 “(i) the widow or widower of the decedent shall
 18 be the first party entitled to receive (instead of any
 19 designated beneficiary); and

20 “(ii) if there is no widow or widower, the party
 21 next entitled to receive shall be the beneficiary or
 22 beneficiaries designated by the employee or Member
 23 (or former employee or Member) in accordance with
 24 the procedures that would otherwise normally apply,
 25 subject to such additional conditions as the Execu-
 26 tive Director shall by regulation prescribe based on

1 section 205(c)(2) of the Employee Retirement In-
 2 come Security Act of 1974 (29 U.S.C. 1055(c)(2)).

3 “(B) The order of precedence under subparagraph
 4 (A) shall not apply if the widow or widower consents in
 5 writing to the application of the order of precedence under
 6 section 8424(d).”

7 (b) EFFECTIVE DATE.—The amendments made by
 8 this section shall take effect on the 90th day after the
 9 date of the enactment of this Act, and shall apply in the
 10 case of any individual who dies on or after such 90th day.

11 **CHAPTER 2—RAILROAD RETIREMENT**

12 **SEC. 541. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 13 **ROAD RETIREMENT ANNUITIES INDE-** 14 **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 15 **PLOYEE.**

16 Section 2 of the Railroad Retirement Act of 1974 (45
 17 U.S.C. 231a) is amended—

18 (1) in subsection (c)(4)(i), by striking “(A) is
 19 entitled to an annuity under subsection (a)(1) and
 20 (B)”;

21 (2) in subsection (e)(5), by striking “or di-
 22 vorced wife” the second place it appears.

1 **SEC. 542. EXTENSION OF TIER II RAILROAD RETIREMENT**
2 **BENEFITS TO SURVIVING FORMER SPOUSES**
3 **PURSUANT TO DIVORCE AGREEMENTS.**

4 (a) IN GENERAL.—Section 5 of the Railroad Retirement Act of 1974 (45 U.S.C. 231d) is amended by adding
5 at the end the following:

7 “(d) Notwithstanding any other provision of law, the
8 payment of any portion of an annuity computed under section 3(b) to a surviving former spouse in accordance with
9 a court decree of divorce, annulment, or legal separation
10 or the terms of any court-approved property settlement
11 incident to any such court decree shall not be terminated
12 upon the death of the individual who performed the service
13 with respect to which such annuity is so computed unless
14 such termination is otherwise required by the terms of
15 such court decree.”

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall take effect on the date of the enactment
19 of this Act.

20 **Subtitle D—Modifications of Joint**
21 **and Survivor Annuity Requirements**
22 **ments**

23 **SEC. 551. MODIFICATIONS OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS.**

25 (a) AMENDMENTS TO ERISA.—

26 (1) AMOUNT OF ANNUITY.—

1 (A) IN GENERAL.—Paragraph (1) of sec-
 2 tion 205(a) of the Employee Retirement Income
 3 Security Act of 1974 (29 U.S.C. 1055(a)) is
 4 amended by inserting “or, at the election of the
 5 participant, shall be provided in the form of a
 6 qualified joint and $\frac{3}{4}$ survivor annuity,” after
 7 “survivor annuity.”

8 (B) DEFINITION.—Subsection (d) of sec-
 9 tion 205 of such Act (29 U.S.C. 1055) is
 10 amended—

11 (i) by redesignating paragraphs (1)
 12 and (2) as subparagraphs (A) and (B), re-
 13 spectively,

14 (ii) by inserting “(1)” after “(d)”,
 15 and

16 (iii) by adding at the end the fol-
 17 lowing new paragraph:

18 “(2)(A) For purposes of this section, the term ‘quali-
 19 fied joint and $\frac{3}{4}$ survivor annuity’ means an annuity—

20 “(i) for the participant while both the partici-
 21 pant and the spouse are alive with a survivor annu-
 22 ity for the life of surviving individual (either the par-
 23 ticipant or the spouse) equal to 75 percent of the
 24 amount of the annuity which is payable to the par-

1 participant while both the participant and the spouse
 2 are alive, and

3 “(ii) which is the actuarial equivalent of a sin-
 4 gle annuity for the life of the participant.

5 “(B) For purposes of this Act, a qualified joint and
 6 $\frac{3}{4}$ survivor annuity shall be treated as a qualified joint
 7 and survivor annuity.”

8 (2) ILLUSTRATION REQUIREMENT.—Clause (i)
 9 of section 205(c)(3)(A) of such Act (29 U.S.C.
 10 1055(c)(3)(A)) is amended to read as follows:

11 “(i) the terms and conditions of each qualified
 12 joint and survivor annuity and qualified joint and $\frac{3}{4}$
 13 survivor annuity offered, accompanied by an illustra-
 14 tion of the benefits under each such annuity for the
 15 particular participant and spouse and an acknowl-
 16 edgement form to be signed by the participant and
 17 the spouse that they have read and considered the
 18 illustration before any form of retirement benefit is
 19 chosen,”.

20 (b) AMENDMENTS TO INTERNAL REVENUE CODE.—

21 (1) AMOUNT OF ANNUITY.—

22 (A) IN GENERAL.—Clause (i) of section
 23 401(a)(11)(A) at the Internal Revenue Code of
 24 1986 (relating to requirement of joint and sur-
 25 vivor annuity and preretirement survivor annu-

ity) is amended by inserting “or, at the election of the participant, shall be provided in the form of a qualified joint and $\frac{3}{4}$ survivor annuity,” after “survivor annuity.”

(B) DEFINITION.—Section 417 (relating to definitions and special rules for purposes of minimum survivor annuity requirements) is amended by adding at the end the following new subsection:

“(i) DEFINITION OF QUALIFIED JOINT AND $\frac{3}{4}$ SURVIVOR ANNUITY.—

“(1) IN GENERAL.—For purposes of this section and section 401(a)(11), the term “qualified joint and $\frac{3}{4}$ survivor annuity” means an annuity—

“(A) for the participant while both the participant and the spouse are alive with a survivor annuity for the life of surviving individual (either the participant or the spouse) equal to 75 percent of the amount of the annuity which is payable to the participant while both the participant and the spouse are alive, and

“(B) which is the actuarial equivalent of a single annuity for the life of the participant.

1 “(2) TREATMENT.—For purposes of this title, a
2 qualified joint and $\frac{3}{4}$ survivor annuity shall be
3 treated as a qualified joint and survivor annuity.”

4 (2) ILLUSTRATION REQUIREMENT.—Clause (i)
5 of section 417(a)(3)(A) (relating to explanation of
6 joint and survivor annuity) is amended to read as
7 follows:

8 “(i) the terms and conditions of each
9 qualified joint and survivor annuity and
10 qualified joint and $\frac{3}{4}$ survivor annuity of-
11 fered, accompanied by an illustration of
12 the benefits under each such annuity for
13 the particular participant and spouse and
14 an acknowledgement form to be signed by
15 the participant and the spouse that they
16 have read and considered the illustration
17 before any form of retirement benefit is
18 chosen,”.

19 (c) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 this section shall apply to plan years beginning on
22 or after January 1, 2004.

23 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
24 GAINED PLANS.—In the case of a plan maintained
25 pursuant to 1 or more collective bargaining agree-

1 ments between employee representatives and 1 or
2 more employers ratified on or before the date of en-
3 actment of this Act, the amendments made by this
4 section shall apply to the first plan year beginning
5 on or after the earlier of—

6 (A) the later of—

7 (i) January 1, 2004, or

8 (ii) the date on which the last of such
9 collective bargaining agreements termi-
10 nates (determined without regard to any
11 extension thereof after the date of enact-
12 ment of this Act), or

13 (B) January 1, 2005.

14 (3) FORM OF ACCRUED BENEFIT NOT TREATED
15 AS DECREASED BY REASON OF AMENDMENT.—For
16 purposes of sections 204(g) of the Employee Retire-
17 ment Income Security Act of 1974 (29 U.S.C.
18 1054(g)) and 411(d)(6) of the Internal Revenue
19 Code of 1986, a plan shall not be treated as having
20 decreased the accrued benefit of a participant solely
21 by reason of the adoption of a plan amendment re-
22 quired to carry out the amendments made by this
23 section.

1 **Subtitle E—Plan Amendments**

2 **SEC. 561. PROVISIONS RELATING TO PLAN AMENDMENTS.**

3 (a) IN GENERAL.—If this section applies to any plan
4 or contract amendment, such plan or contract shall be
5 treated as being operated in accordance with the terms
6 of the plan during the period described in subsection
7 (b)(2)(A).

8 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

9 (1) IN GENERAL.—This section shall apply to
10 any amendment to any plan or annuity contract
11 which is made—

12 (A) pursuant to any amendment made by
13 this Act, or pursuant to any regulation issued
14 under this Act, and

15 (B) on or before the last day of the first
16 plan year beginning on or after January 1,
17 2005.

18 In the case of a governmental plan (as defined in
19 section 414(d) of the Internal Revenue Code of
20 1986), this paragraph shall be applied by sub-
21 stituting “2007” for “2005”.

22 (2) CONDITIONS.—This section shall not apply
23 to any amendment unless—

24 (A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan); and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

TITLE VI—OTHER PROVISIONS RELATING TO PENSIONS Subtitle A—General Provisions

SEC. 601. EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

(a) IN GENERAL.—The Secretary of the Treasury shall have full authority to establish and implement the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, ex-

1 cise, or other taxes to ensure that any tax, penalty, or
2 sanction is not excessive and bears a reasonable relation-
3 ship to the nature, extent, and severity of the failure.

4 (b) IMPROVEMENTS.—The Secretary of the Treasury
5 shall continue to update and improve the Employee Plans
6 Compliance Resolution System (or any successor pro-
7 gram), giving special attention to—

8 (1) increasing the awareness and knowledge of
9 small employers concerning the availability and use
10 of the program;

11 (2) taking into account special concerns and
12 circumstances that small employers face with respect
13 to compliance and correction of compliance failures;

14 (3) extending the duration of the self-correction
15 period under the Self-Correction Program for signifi-
16 cant compliance failures;

17 (4) expanding the availability to correct insig-
18 nificant compliance failures under the Self-Correc-
19 tion Program during audit; and

20 (5) assuring that any tax, penalty, or sanction
21 that is imposed by reason of a compliance failure is
22 not excessive and bears a reasonable relationship to
23 the nature, extent, and severity of the failure.

1 **SEC. 602. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
 2 **MORATORIUM ON APPLICATION OF CERTAIN**
 3 **NONDISCRIMINATION RULES APPLICABLE TO**
 4 **STATE AND LOCAL PLANS.**

5 (a) IN GENERAL.—The following provisions are each
 6 amended by striking “maintained by a State or local gov-
 7 ernment or political subdivision thereof (or agency or in-
 8 strumentality thereof)”:

9 (1) Section 401(a)(5)(G) of the Internal Rev-
 10 enue Code of 1986.

11 (2) Section 401(a)(26)(H) of such Code.

12 (3) Section 401(k)(3)(G) of such Code.

13 (4) Section 1505(d)(2) of the Taxpayer Relief
 14 Act of 1997.

15 (b) CONFORMING AMENDMENTS.—

16 (1) The heading for section 401(a)(5)(G) of
 17 such Code is amended to read as follows: “GOVERN-
 18 MENTAL PLANS.—”.

19 (2) The heading for section 401(a)(26)(H) of
 20 such Code is amended to read as follows: “EXCEP-
 21 TION FOR GOVERNMENTAL PLANS.—”.

22 (3) Section 401(k)(3)(G) of such Code is
 23 amended by inserting “GOVERNMENTAL PLANS.—”
 24 after “(G)”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan years beginning after De-
 3 cember 31, 2002.

4 **SEC. 603. NOTICE AND CONSENT PERIOD REGARDING DIS-**
 5 **TRIBUTIONS.**

6 (a) EXPANSION OF PERIOD.—

7 (1) AMENDMENT OF INTERNAL REVENUE
 8 CODE.—

9 (A) IN GENERAL.—Section 417(a)(6)(A) of
 10 the Internal Revenue Code of 1986 is amended
 11 by striking “90-day” and inserting “180-day”.

12 (B) MODIFICATION OF REGULATIONS.—
 13 The Secretary of the Treasury shall modify the
 14 regulations under sections 402(f), 411(a)(11),
 15 and 417 of the Internal Revenue Code of 1986
 16 by substituting “180 days” for “90 days” each
 17 place it appears in Treasury Regulations sec-
 18 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–
 19 1(b).

20 (2) AMENDMENT OF ERISA.—

21 (A) IN GENERAL.—Section 205(c)(7)(A) of
 22 the Employee Retirement Income Security Act
 23 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
 24 by striking “90-day” and inserting “180-day”.

1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the
3 regulations under part 2 of subtitle B of title
4 I of the Employee Retirement Income Security
5 Act of 1974 relating to sections 203(e) and 205
6 of such Act by substituting “180 days” for “90
7 days” each place it appears.

8 (3) EFFECTIVE DATE.—The amendments and
9 modifications made or required by this subsection
10 shall apply to years beginning after December 31,
11 2002.

12 (b) NOTIFICATION OF RIGHT TO DEFER.—

13 (1) IN GENERAL.—The Secretary of the Treas-
14 ury shall modify the regulations under section
15 411(a)(11) of the Internal Revenue Code of 1986
16 and under section 205 of the Employee Retirement
17 Income Security Act of 1974 to provide that the de-
18 scription of a participant’s right, if any, to defer re-
19 ceipt of a distribution shall also describe the con-
20 sequences of failing to defer such receipt.

21 (2) EFFECTIVE DATE.—

22 (A) IN GENERAL.—The modifications re-
23 quired by paragraph (1) shall apply to years be-
24 ginning after December 31, 2002.

1 (B) REASONABLE NOTICE.—A plan shall
 2 not be treated as failing to meet the require-
 3 ments of section 411(a)(11) of such Code or
 4 section 205 of such Act with respect to any de-
 5 scription of consequences described in para-
 6 graph (1) made within 90 days after the Sec-
 7 retary of the Treasury issues the modifications
 8 required by paragraph (1) if the plan adminis-
 9 trator makes a reasonable attempt to comply
 10 with such requirements.

11 **SEC. 604. TECHNICAL CORRECTIONS TO SAVER ACT.**

12 Section 517 of the Employee Retirement Income Se-
 13 curity Act of 1974 (29 U.S.C. 1147) is amended—

14 (1) in subsection (a), by striking “2001 and
 15 2005 on or after September 1 of each year involved”
 16 and inserting “2002, 2006, and 2010”;

17 (2) in subsection (b), by adding at the end the
 18 following new sentence: “To effectuate the purposes
 19 of this paragraph, the Secretary may enter into a co-
 20 operative agreement, pursuant to the Federal Grant
 21 and Cooperative Agreement Act of 1977 (31 U.S.C.
 22 6301 et seq.), with any appropriate, qualified enti-
 23 ty.”;

24 (3) in subsection (e)(2)—

1 (A) by striking “Committee on Labor and
2 Human Resources” in subparagraph (D) and
3 inserting “Committee on Health, Education,
4 Labor, and Pensions”;

5 (B) by striking subparagraph (F) and in-
6 serting the following:

7 “(F) the Chairman and Ranking Member
8 of the Subcommittee on Labor, Health and
9 Human Services, and Education of the Com-
10 mittee on Appropriations of the House of Rep-
11 resentatives and the Chairman and Ranking
12 Member of the Subcommittee on Labor, Health
13 and Human Services, and Education of the
14 Committee on Appropriations of the Senate;”;

15 (C) by redesignating subparagraph (G) as
16 subparagraph (J); and

17 (D) by inserting after subparagraph (F)
18 the following new subparagraphs:

19 “(G) the Chairman and Ranking Member
20 of the Committee on Finance of the Senate;

21 “(H) the Chairman and Ranking Member
22 of the Committee on Ways and Means of the
23 House of Representatives;

24 “(I) the Chairman and Ranking Member
25 of the Subcommittee on Employer-Employee

1 Relations of the Committee on Education and
 2 the Workforce of the House of Representatives;
 3 and”;

4 (4) in subsection (e)(3)(B), by striking “Janu-
 5 ary 31, 1998” and inserting “3 months before the
 6 convening of each summit;”;

7 (5) in subsection (f)(1)(C), by inserting “, no
 8 later than 90 days prior to the date of the com-
 9 mencement of the National Summit,” after “com-
 10 ment”;

11 (6) in subsection (g), by inserting “, in con-
 12 sultation with the congressional leaders specified in
 13 subsection (e)(2),” after “report” the first place it
 14 appears in the text;

15 (7) in subsection (i)—

16 (A) by striking “for fiscal years beginning
 17 on or after October 1, 1997,”; and

18 (B) by adding at the end the following new
 19 paragraph:

20 “(3) RECEPTION AND REPRESENTATION AU-
 21 THORITY.—The Secretary is hereby granted recep-
 22 tion and representation authority limited specifically
 23 to the events at the National Summit. The Secretary
 24 shall use any private contributions accepted in con-
 25 nection with the National Summit prior to using

1 funds appropriated for purposes of the National
2 Summit pursuant to this paragraph.”; and

3 (8) in subsection (k)—

4 (A) by striking “shall enter into a contract
5 on a sole-source basis” and inserting “may
6 enter into a contract on a sole-source basis”;
7 and

8 (B) by striking “in fiscal year 1998”.

9 **SEC. 605. MISSING PARTICIPANTS.**

10 (a) IN GENERAL.—Section 4050 of the Employee Re-
11 tirement Income Security Act of 1974 (29 U.S.C. 1350)
12 is amended by redesignating subsection (c) as subsection
13 (e) and by inserting after subsection (b) the following new
14 subsections:

15 “(c) MULTIEMPLOYER PLANS.—The corporation
16 shall prescribe rules similar to the rules in subsection (a)
17 for multiemployer plans covered by this title that termi-
18 nate under section 4041A.

19 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

20 “(1) TRANSFER TO CORPORATION.—The plan
21 administrator of a plan described in paragraph (4)
22 may elect to transfer a missing participant’s benefits
23 to the corporation upon termination of the plan.

24 “(2) INFORMATION TO THE CORPORATION.—To
25 the extent provided in regulations, the plan adminis-

1 trator of a plan described in paragraph (4) shall,
 2 upon termination of the plan, provide the corpora-
 3 tion information with respect to benefits of a miss-
 4 ing participant if the plan transfers such benefits—

5 “(A) to the corporation, or

6 “(B) to an entity other than the corpora-
 7 tion or a plan described in paragraph (4)(B)(ii).

8 “(3) PAYMENT BY THE CORPORATION.—If ben-
 9 efits of a missing participant were transferred to the
 10 corporation under paragraph (1), the corporation
 11 shall, upon location of the participant or beneficiary,
 12 pay to the participant or beneficiary the amount
 13 transferred (or the appropriate survivor benefit) ei-
 14 ther—

15 “(A) in a single sum (plus interest), or

16 “(B) in such other form as is specified in
 17 regulations of the corporation.

18 “(4) PLANS DESCRIBED.—A plan is described
 19 in this paragraph if—

20 “(A) the plan is a pension plan (within the
 21 meaning of section 3(2))—

22 “(i) to which the provisions of this
 23 section do not apply (without regard to
 24 this subsection), and

1 “(ii) which is not a plan described in
 2 paragraphs (2) through (11) of section
 3 4021(b), and

4 “(B) at the time the assets are to be dis-
 5 tributed upon termination, the plan—

6 “(i) has missing participants, and

7 “(ii) has not provided for the transfer
 8 of assets to pay the benefits of all missing
 9 participants to another pension plan (with-
 10 in the meaning of section 3(2)).

11 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
 12 Subsections (a)(1) and (a)(3) shall not apply to a
 13 plan described in paragraph (4).”.

14 (b) CONFORMING AMENDMENTS.—Section 206(f) of
 15 such Act (29 U.S.C. 1056(f)) is amended—

16 (1) by striking “title IV” and inserting “section
 17 4050”; and

18 (2) by striking “the plan shall provide that,”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to distributions made after final
 21 regulations implementing subsections (c) and (d) of sec-
 22 tion 4050 of the Employee Retirement Income Security
 23 Act of 1974 (as added by subsection (a)), respectively, are
 24 prescribed.

1 **SEC. 606. REDUCED PBGC PREMIUM FOR NEW PLANS OF**
 2 **SMALL EMPLOYERS.**

3 (a) IN GENERAL.—Subparagraph (A) of section
 4 4006(a)(3) of the Employee Retirement Income Security
 5 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

6 (1) in clause (i), by inserting “other than a new
 7 single-employer plan (as defined in subparagraph
 8 (F)) maintained by a small employer (as so de-
 9 fined),” after “single-employer plan,”

10 (2) in clause (iii), by striking the period at the
 11 end and inserting “, and”, and

12 (3) by adding at the end the following new
 13 clause:

14 “(iv) in the case of a new single-employer plan
 15 (as defined in subparagraph (F)) maintained by a
 16 small employer (as so defined) for the plan year, \$5
 17 for each individual who is a participant in such plan
 18 during the plan year.”.

19 (b) DEFINITION OF NEW SINGLE-EMPLOYER
 20 PLAN.—Section 4006(a)(3) of the Employee Retirement
 21 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is
 22 amended by adding at the end the following new subpara-
 23 graph:

24 “(F)(i) For purposes of this paragraph, a single-em-
 25 ployer plan maintained by a contributing sponsor shall be
 26 treated as a new single-employer plan for each of its first

1 5 plan years if, during the 36-month period ending on the
 2 date of the adoption of such plan, the sponsor or any
 3 member of such sponsor's controlled group (or any prede-
 4 cessor of either) did not establish or maintain a plan to
 5 which this title applies with respect to which benefits were
 6 accrued for substantially the same employees as are in the
 7 new single-employer plan.

8 “(ii)(I) For purposes of this paragraph, the term
 9 ‘small employer’ means an employer which on the first day
 10 of any plan year has, in aggregation with all members of
 11 the controlled group of such employer, 100 or fewer em-
 12 ployees.

13 “(II) In the case of a plan maintained by two or more
 14 contributing sponsors that are not part of the same con-
 15 trolled group, the employees of all contributing sponsors
 16 and controlled groups of such sponsors shall be aggregated
 17 for purposes of determining whether any contributing
 18 sponsor is a small employer.”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to plans first effective after Decem-
 21 ber 31, 2002.

22 **SEC. 607. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
 23 **NEW AND SMALL PLANS.**

24 (a) NEW PLANS.—Subparagraph (E) of section
 25 4006(a)(3) of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by
 2 adding at the end the following new clause:

3 “(v) In the case of a new defined benefit plan, the
 4 amount determined under clause (ii) for any plan year
 5 shall be an amount equal to the product of the amount
 6 determined under clause (ii) and the applicable percent-
 7 age. For purposes of this clause, the term ‘applicable per-
 8 centage’ means—

9 “(I) 0 percent, for the first plan year.

10 “(II) 20 percent, for the second plan year.

11 “(III) 40 percent, for the third plan year.

12 “(IV) 60 percent, for the fourth plan year.

13 “(V) 80 percent, for the fifth plan year.

14 For purposes of this clause, a defined benefit plan (as de-
 15 fined in section 3(35)) maintained by a contributing spon-
 16 sor shall be treated as a new defined benefit plan for each
 17 of its first 5 plan years if, during the 36-month period
 18 ending on the date of the adoption of the plan, the sponsor
 19 and each member of any controlled group including the
 20 sponsor (or any predecessor of either) did not establish
 21 or maintain a plan to which this title applies with respect
 22 to which benefits were accrued for substantially the same
 23 employees as are in the new plan.”.

24 (b) SMALL PLANS.—Paragraph (3) of section
 25 4006(a) of the Employee Retirement Income Security Act

1 of 1974 (29 U.S.C. 1306(a)), as amended by section
2 406(b), is amended—

3 (1) by striking “The” in subparagraph (E)(i)
4 and inserting “Except as provided in subparagraph
5 (G), the”, and

6 (2) by inserting after subparagraph (F) the fol-
7 lowing new subparagraph:

8 “(G)(i) In the case of an employer who has 25 or
9 fewer employees on the first day of the plan year, the addi-
10 tional premium determined under subparagraph (E) for
11 each participant shall not exceed \$5 multiplied by the
12 number of participants in the plan as of the close of the
13 preceding plan year.

14 “(ii) For purposes of clause (i), whether an employer
15 has 25 or fewer employees on the first day of the plan
16 year is determined by taking into consideration all of the
17 employees of all members of the contributing sponsor’s
18 controlled group. In the case of a plan maintained by two
19 or more contributing sponsors, the employees of all con-
20 tributing sponsors and their controlled groups shall be ag-
21 gregated for purposes of determining whether the 25-or-
22 fewer-employees limitation has been satisfied.”.

23 (c) EFFECTIVE DATES.—

1 (1) SUBSECTION (a).—The amendments made
2 by subsection (a) shall apply to plans first effective
3 after December 31, 2002.

4 (2) SUBSECTION (b).—The amendments made
5 by subsection (b) shall apply to plan years beginning
6 after December 31, 2002.

7 **SEC. 608. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
8 **PREMIUM OVERPAYMENT REFUNDS.**

9 (a) IN GENERAL.—Section 4007(b) of the Employ-
10 ment Retirement Income Security Act of 1974 (29 U.S.C.
11 1307(b)) is amended—

12 (1) by striking “(b)” and inserting “(b)(1)”,
13 and

14 (2) by inserting at the end the following new
15 paragraph:

16 “(2) The corporation is authorized to pay, subject to
17 regulations prescribed by the corporation, interest on the
18 amount of any overpayment of premium refunded to a des-
19 ignated payor. Interest under this paragraph shall be cal-
20 culated at the same rate and in the same manner as inter-
21 est is calculated for underpayments under paragraph
22 (1).”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) shall apply to interest accruing for periods

1 beginning not earlier than the date of the enactment of
2 this Act.

3 **SEC. 609. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
4 **PLANS.**

5 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
6 Section 4022(b)(5) of the Employee Retirement Income
7 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
8 to read as follows:

9 “(5)(A) For purposes of this paragraph, the term
10 ‘majority owner’ means an individual who, at any time
11 during the 60-month period ending on the date the deter-
12 mination is being made—

13 “(i) owns the entire interest in an unincor-
14 porated trade or business,

15 “(ii) in the case of a partnership, is a partner
16 who owns, directly or indirectly, 50 percent or more
17 of either the capital interest or the profits interest
18 in such partnership, or

19 “(iii) in the case of a corporation, owns, directly
20 or indirectly, 50 percent or more in value of either
21 the voting stock of that corporation or all the stock
22 of that corporation.

23 For purposes of clause (iii), the constructive ownership
24 rules of section 1563(e) of the Internal Revenue Code of

1 1986 shall apply (determined without regard to section
2 1563(e)(3)(C)).

3 “(B) In the case of a participant who is a majority
4 owner, the amount of benefits guaranteed under this sec-
5 tion shall equal the product of—

6 “(i) a fraction (not to exceed 1) the numerator
7 of which is the number of years from the later of the
8 effective date or the adoption date of the plan to the
9 termination date, and the denominator of which is
10 10, and

11 “(ii) the amount of benefits that would be guar-
12 anteed under this section if the participant were not
13 a majority owner.”.

14 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

15 (1) Section 4044(a)(4)(B) of the Employee Re-
16 tirement Income Security Act of 1974 (29 U.S.C.
17 1344(a)(4)(B)) is amended by striking “section
18 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

19 (2) Section 4044(b) of such Act (29 U.S.C.
20 1344(b)) is amended—

21 (A) by striking “(5)” in paragraph (2) and
22 inserting “(4), (5),” and

23 (B) by redesignating paragraphs (3)
24 through (6) as paragraphs (4) through (7), re-

1 spectively, and by inserting after paragraph (2)
2 the following new paragraph:

3 “(3) If assets available for allocation under
4 paragraph (4) of subsection (a) are insufficient to
5 satisfy in full the benefits of all individuals who are
6 described in that paragraph, the assets shall be allo-
7 cated first to benefits described in subparagraph (A)
8 of that paragraph. Any remaining assets shall then
9 be allocated to benefits described in subparagraph
10 (B) of that paragraph. If assets allocated to such
11 subparagraph (B) are insufficient to satisfy in full
12 the benefits described in that subparagraph, the as-
13 sets shall be allocated pro rata among individuals on
14 the basis of the present value (as of the termination
15 date) of their respective benefits described in that
16 subparagraph.”.

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 4021 of the Employee Retirement
19 Income Security Act of 1974 (29 U.S.C. 1321) is
20 amended—

21 (A) in subsection (b)(9), by striking “as
22 defined in section 4022(b)(6)”, and

23 (B) by adding at the end the following new
24 subsection:

1 “(d) For purposes of subsection (b)(9), the term ‘sub-
 2 stantial owner’ means an individual who, at any time dur-
 3 ing the 60-month period ending on the date the determina-
 4 tion is being made—

5 “(1) owns the entire interest in an unincor-
 6 porated trade or business,

7 “(2) in the case of a partnership, is a partner
 8 who owns, directly or indirectly, more than 10 per-
 9 cent of either the capital interest or the profits inter-
 10 est in such partnership, or

11 “(3) in the case of a corporation, owns, directly
 12 or indirectly, more than 10 percent in value of either
 13 the voting stock of that corporation or all the stock
 14 of that corporation.

15 For purposes of paragraph (3), the constructive ownership
 16 rules of section 1563(e) of the Internal Revenue Code of
 17 1986 shall apply (determined without regard to section
 18 1563(e)(3)(C)).”.

19 (2) Section 4043(c)(7) of such Act (29 U.S.C.
 20 1343(c)(7)) is amended by striking “section 4022(b)(6)”
 21 and inserting “section 4021(d)”.

22 (d) EFFECTIVE DATES.—

23 (1) IN GENERAL.—Except as provided in para-
 24 graph (2), the amendments made by this section
 25 shall apply to plan terminations—

1 (A) under section 4041(c) of the Employee
 2 Retirement Income Security Act of 1974 (29
 3 U.S.C. 1341(c)) with respect to which notices
 4 of intent to terminate are provided under sec-
 5 tion 4041(a)(2) of such Act (29 U.S.C.
 6 1341(a)(2)) after December 31, 2002, and

7 (B) under section 4042 of such Act (29
 8 U.S.C. 1342) with respect to which proceedings
 9 are instituted by the corporation after such
 10 date.

11 (2) CONFORMING AMENDMENTS.—The amend-
 12 ments made by subsection (c) shall take effect on
 13 January 1, 2003.

14 **SEC. 610. BENEFIT SUSPENSION NOTICE.**

15 (a) MODIFICATION OF REGULATION.—The Secretary
 16 of Labor shall modify the regulation under subparagraph
 17 (B) of section 203(a)(3) of the Employee Retirement In-
 18 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to
 19 provide that the notification required by such regulation
 20 in connection with any suspension of benefits described in
 21 such subparagraph—

22 (1) in the case of an employee who returns to
 23 service described in section 203(a)(3)(B)(i) or (ii) of
 24 such Act after commencement of payment of bene-
 25 fits under the plan, shall be made during the first

1 calendar month or the first 4- or 5-week payroll pe-
 2 riod ending in a calendar month in which the plan
 3 withholds payments, and

4 (2) in the case of any employee who is not de-
 5 scribed in paragraph (1)—

6 (A) may be included in the summary plan
 7 description for the plan furnished in accordance
 8 with section 104(b) of such Act (29 U.S.C.
 9 1024(b)), rather than in a separate notice, and

10 (B) need not include a copy of the relevant
 11 plan provisions.

12 (b) EFFECTIVE DATE.—The modification made
 13 under this section shall apply to plan years beginning after
 14 December 31, 2002.

15 **SEC. 611. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
 16 **ING REQUIREMENTS.**

17 (a) IN GENERAL.—Subclause (III) of section
 18 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is
 19 amended—

20 (1) by striking “2002 or 2003” in the text and
 21 inserting “2001, 2002, or 2003”,

22 (2) by inserting “(108 percent for plan years
 23 beginning in 2001)” after “120 percent”, and

24 (3) by striking “2002 AND 2003” in the heading
 25 and inserting “2001, 2002, AND 2003”.

1 (b) SPECIAL RULE.—Subclause (III) of section
 2 302(d)(7)(C)(i) of the Employee Retirement Income Secu-
 3 rity Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is amend-
 4 ed—

5 (1) by striking “2002 or 2003” in the text and
 6 inserting “2001, 2002, or 2003”,

7 (2) by inserting “(108 percent for plan years
 8 beginning in 2001)” after “120 percent”, and

9 (3) by striking “2002 AND 2003” in the heading
 10 and inserting “2001, 2002, AND 2003”.

11 (c) PBGC.—The last sentence of subclause (IV) of
 12 section 4006(a)(3)(E)(iii) of such Act (29 U.S.C.
 13 1306(a)(3)(E)(iii)) is amended to read as follows: “Any
 14 reference to this clause or this subparagraph by any other
 15 sections or subsections (other than sections 4005, 4010,
 16 4011 and 4043) shall be treated as a reference to this
 17 clause or this subparagraph without regard to this sub-
 18 clause.”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
 21 this section shall take effect as if included in the
 22 amendments made by section 405 of the Job Cre-
 23 ation and Worker Assistance Act of 2002.

24 (2) ELECTION.—The plan sponsor or plan ad-
 25 ministrator of a plan may elect whether to have the

1 amendments made by subsections (a) and (b) apply.
 2 Such election shall be made in such manner and at
 3 such time as the Secretary of the Treasury or his
 4 delegate may prescribe and, once made, may not be
 5 revoked. An election to apply such amendments shall
 6 not be treated as a change in actuarial assumptions
 7 for purposes of reports required to be filed with the
 8 Secretary of Labor, the Secretary of the Treasury,
 9 or the Pension Benefit Guaranty Corporation.

10 **SEC. 612. VOLUNTARY EARLY RETIREMENT INCENTIVE AND**
 11 **EMPLOYMENT RETENTION PLANS MAIN-**
 12 **TAINED BY LOCAL EDUCATIONAL AGENCIES**
 13 **AND OTHER ENTITIES.**

14 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE
 15 PLANS.—

16 (1) TREATMENT AS PLAN PROVIDING SEVER-
 17 ANCE PAY.—Section 457(e)(11) of the Internal Rev-
 18 enue Code of 1986 (relating to certain plans ex-
 19 cluded) is amended by adding at the end the fol-
 20 lowing new subparagraph:

21 “(D) CERTAIN VOLUNTARY EARLY RETIRE-
 22 MENT INCENTIVE PLANS.—

23 “(i) IN GENERAL.—If an applicable
 24 voluntary early retirement incentive plan—

1 “(I) makes payments or supple-
2 ments as an early retirement benefit,
3 a retirement-type subsidy, or a benefit
4 described in the last sentence of sec-
5 tion 411(a)(9), and

6 “(II) such payments or supple-
7 ments are made in coordination with
8 a defined benefit plan which is de-
9 scribed in section 401(a) and includes
10 a trust exempt from tax under section
11 501(a) and which is maintained by an
12 eligible employer described in para-
13 graph (1)(A) or by an education asso-
14 ciation described in clause (ii)(II),
15 such applicable plan shall be treated for
16 purposes of subparagraph (A)(i) as a bona
17 fide severance pay plan with respect to
18 such payments or supplements to the ex-
19 tent such payments or supplements could
20 otherwise have been provided under such
21 defined benefit plan (determined as if sec-
22 tion 411 applied to such defined benefit
23 plan).

24 “(ii) APPLICABLE VOLUNTARY EARLY
25 RETIREMENT INCENTIVE PLAN.—For pur-

poses of this subparagraph, the term ‘applicable voluntary early retirement incentive plan’ means a voluntary early retirement incentive plan maintained by—

“(I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)), or

“(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c) (5) or (6) and exempt from tax under section 501(a).”

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4(l)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(l)(1)) is amended—

(A) by inserting “(A)” after “(1)”,

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by redesignating clauses (i) and (ii) of subparagraph (B) (as in effect before the amendments made by subparagraph (B)) as subclauses (I) and (II), respectively, and

1 (D) by adding at the end the following:

2 “(B) A voluntary early retirement incen-
3 tive plan that—

4 “(i) is maintained by—

5 “(I) a local educational agency
6 (as defined in section 9101 of the Ele-
7 mentary and Secondary Education
8 Act of 1965 (20 U.S.C. 7801), or

9 “(II) an education association
10 which principally represents employees
11 of 1 or more agencies described in
12 subclause (I) and which is described
13 in section 501(c) (5) or (6) of the In-
14 ternal Revenue Code of 1986 and ex-
15 empt from taxation under section
16 501(a) of such Code, and

17 “(ii) makes payments or supplements
18 described in subclauses (I) and (II) of sub-
19 paragraph (A)(ii) in coordination with a
20 defined benefit plan (as so defined) main-
21 tained by an eligible employer described in
22 section 457(e)(1)(A) of such Code or by an
23 education association described in clause
24 (i)(II),

1 shall be treated solely for purposes of subpara-
 2 graph (A)(ii) as if it were a part of the defined
 3 benefit plan with respect to such payments or
 4 supplements. Payments or supplements under
 5 such a voluntary early retirement incentive plan
 6 shall not constitute severance pay for purposes
 7 of section 4(l)(2) of the Age Discrimination in
 8 Employment Act (29 U.S.C. 623(l)(2)).”

9 (b) EMPLOYMENT RETENTION PLANS.—

10 (1) IN GENERAL.—Section 457(f)(2) of the In-
 11 ternal Revenue Code of 1986 (relating to exceptions)
 12 is amended by striking “and” at the end of subpara-
 13 graph (D), by striking the period at the end of sub-
 14 paragraph (E) and inserting “, and”, and by adding
 15 at the end the following:

16 “(F) that portion of any applicable employ-
 17 ment retention plan described in paragraph (4)
 18 with respect to any participant.”

19 (2) DEFINITIONS AND RULES RELATING TO EM-
 20 PLOYMENT RETENTION PLANS.—Section 457(f) of
 21 such Code is amended by adding at the end the fol-
 22 lowing new paragraph:

23 “(4) EMPLOYMENT RETENTION PLANS.—For
 24 purposes of paragraph (2)(F)—

1 “(A) IN GENERAL.—The portion of an ap-
 2 plicable employment retention plan described in
 3 this paragraph with respect to any participant
 4 is that portion of the plan which provides bene-
 5 fits payable to the participant not in excess of
 6 twice the applicable dollar limit determined
 7 under subsection (e)(15).

8 “(B) OTHER RULES.—

9 “(i) LIMITATION.—Paragraph (2)(F)
 10 shall only apply to the portion of the plan
 11 described in subparagraph (A) for years
 12 preceding the year in which such portion is
 13 paid or otherwise made available to the
 14 participant.

15 “(ii) TREATMENT.—A plan shall not
 16 be treated for purposes of this title as pro-
 17 viding for the deferral of compensation for
 18 any year with respect to the portion of the
 19 plan described in subparagraph (A).

20 “(C) APPLICABLE EMPLOYMENT RETEN-
 21 TION PLAN.—The term ‘applicable employment
 22 retention plan’ means an employment retention
 23 plan maintained by—

24 “(i) a local educational agency (as de-
 25 fined in section 9101 of the Elementary

1 and Secondary Education Act of 1965 (20
2 U.S.C. 7801), or

3 “(ii) an education association which
4 principally represents employees of 1 or
5 more agencies described in clause (i) and
6 which is described in section 501(c)(5) or
7 (6) and exempt from taxation under sec-
8 tion 501(a), and

9 “(D) EMPLOYMENT RETENTION PLAN.—
10 The term ‘employment retention plan’ means a
11 plan to pay, upon termination of employment,
12 compensation to an employee of a local edu-
13 cational agency or education association de-
14 scribed in subparagraph (C) for purposes of—

15 “(i) retaining the services of the em-
16 ployee, or

17 “(ii) rewarding such employee for the
18 employee’s service with 1 or more such
19 agencies or associations.”

20 (c) COORDINATION WITH ERISA.—Section 3(2)(B)
21 of the Employee Retirement Income Security Act of 1974
22 (29 U.S.C. 1002(2)(B)) is amended by adding at the end
23 the following: “An applicable voluntary early retirement
24 incentive plan (as defined in section 457(e)(11)(D)(ii) of
25 the Internal Revenue Code of 1986) making payments or

1 supplements described in section 457(e)(11)(D)(i) of such
 2 Code, and an applicable employment retention plan (as de-
 3 fined in section 457(f)(4)(C) of such Code) making pay-
 4 ments of benefits described in section 457(f)(4)(A) of such
 5 Code, shall, for purposes of this title, be treated as a wel-
 6 fare plan (and not a pension plan) with respect to such
 7 payments and supplements.”

8 (d) EFFECTIVE DATES.—

9 (1) IN GENERAL.—The amendments made by
 10 this Act shall take effect on the date of the enact-
 11 ment of this Act.

12 (2) TAX AMENDMENTS.—The amendments
 13 made by subsections (a)(1) and (b) shall apply to
 14 taxable years ending after the date of the enactment
 15 of this Act.

16 (3) ERISA AMENDMENTS.—The amendment
 17 made by subsection (c) shall apply to plan years
 18 ending after the date of the enactment of this Act.

19 (4) CONSTRUCTION.—Nothing in the amend-
 20 ments made by this section shall alter or affect the
 21 construction of the Internal Revenue Code of 1986,
 22 the Employee Retirement Income Security Act of
 23 1974, or the Age Discrimination in Employment Act
 24 of 1967 as applied to any plan, arrangement, or con-
 25 duct to which such amendments do not apply.

1 **SEC. 613. AUTOMATIC ROLLOVERS OF CERTAIN MANDA-**
2 **TORY DISTRIBUTIONS.**

3 (a) IN GENERAL.—Subsections (c) and (d) of section
4 657 of the Economic Growth and Tax Relief Reconcili-
5 ation Act of 2001, as amended by section 411(t) of the
6 Job Creation and Worker Assistance Act of 2002, are
7 amended to read as follows:

8 “(c) REGULATIONS.—

9 “(1) AUTOMATIC ROLLOVER SAFE HARBOR.—
10 Not later than December 31, 2002, the Secretary of
11 Labor shall prescribe interim final regulations or
12 other administrative guidance providing for safe har-
13 bors under which the designation of an institution
14 and investment of funds in accordance with section
15 401(a)(31)(B) of the Internal Revenue Code of 1986
16 is deemed to satisfy the fiduciary requirements of
17 section 404(a) of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C. 1104(a)).

19 “(2) USE OF LOW-COST INDIVIDUAL RETIRE-
20 MENT PLANS.—The Secretary of the Treasury and
21 the Secretary of Labor may provide, and shall give
22 consideration to providing, special relief with respect
23 to the use of low-cost individual retirement plans for
24 purposes of transfers under section 401(a)(31)(B) of
25 the Internal Revenue Code of 1986 and for other

1 uses that promote the preservation of assets for re-
 2 tirement income purposes.

3 “(d) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to distributions made after Decem-
 5 ber 31, 2003.”

6 (b) EFFECTIVE DATE.—The amendment made by
 7 this section shall take effect as if included in the amend-
 8 ments made by, and provisions of, section 657 of the Eco-
 9 nomic Growth and Tax Relief Reconciliation Act of 2001.

10 **SEC. 614. 2-YEAR EXTENSION OF TRANSITION RULE TO**
 11 **PENSION FUNDING REQUIREMENTS.**

12 (a) IN GENERAL.—Section 769(c) of the Retirement
 13 Protection Act of 1994, as added by section 1508 of the
 14 Taxpayer Relief Act of 1997, is amended—

15 (1) by inserting “except as provided in para-
 16 graph (3),” before “the transition rules”, and

17 (2) by adding at the end the following:

18 “(3) SPECIAL RULES.—In the case of plan
 19 years beginning in 2004 and 2005, the following
 20 transition rules shall apply in lieu of the transition
 21 rules described in paragraph (2):

22 “(A) For purposes of section 412(l)(9)(A)
 23 of the Internal Revenue Code of 1986 and sec-
 24 tion 302(d)(9)(A) of the Employee Retirement
 25 Income Security Act of 1974, the funded cur-

1 rent liability percentage for any plan year shall
2 be treated as not less than 90 percent.

3 “(B) For purposes of section 412(m) of
4 the Internal Revenue Code of 1986 and section
5 302(e) of the Employee Retirement Income Se-
6 curity Act of 1974, the funded current liability
7 percentage for any plan year shall be treated as
8 not less than 100 percent.

9 “(C) For purposes of determining un-
10 funded vested benefits under section
11 4006(a)(3)(E)(iii) of the Employee Retirement
12 Income Security Act of 1974, the mortality
13 table shall be the mortality table used by the
14 plan.”

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2002.

18 **SEC. 615. ACCELERATION OF COMPUTATION OF BENEFITS**
19 **ATTRIBUTABLE TO RECOVERIES OF EM-**
20 **PLOYER LIABILITY UNDER SECTION 4062.**

21 (a) MODIFICATION OF AVERAGE RECOVERY PER-
22 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-
23 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS
24 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the

1 Employee Retirement Income Security Act of 1974 (29
2 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

3 “(ii) notices of intent to terminate
4 were provided (or in the case of a termi-
5 nation by the corporation, a notice of de-
6 termination under section 4042 was
7 issued) during the 5-Federal fiscal year pe-
8 riod ending with the third fiscal year pre-
9 ceding the fiscal year in which occurs the
10 date of the notice of intent to terminate
11 (or the notice of determination under sec-
12 tion 4042) with respect to the plan termi-
13 nation for which the recovery ratio is being
14 determined.”

15 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR
16 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
17 PARTICIPANTS AND BENEFICIARIES.—Section 4044 of the
18 Employee Retirement Income Security Act of 1974 (29
19 U.S.C. 1362) is amended by adding at the end the fol-
20 lowing new subsection:

21 “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR
22 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
23 PARTICIPANTS AND BENEFICIARIES.—

24 “(1) IN GENERAL.—In the case of a terminated
25 plan, the value of the recovery of liability under sec-

tion 4062(c) allocable as a plan asset under this section for purposes of determining the amount of benefits payable by the corporation shall be determined by multiplying—

“(A) the amount of liability under section 4062(c) as of the termination date of the plan, by

“(B) the applicable section 4062(c) recovery ratio.

“(2) SECTION 4062(c) RECOVERY RATIO.—For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in subparagraph (C), the term ‘section 4062(c) recovery ratio’ means the average, determined with respect to prior plan terminations described in subparagraph (B), of the ratio which—

“(i) the value of the recovery under section 4062(c) determined by the corporation in connection with any such prior termination, bears to

“(ii) the amount of liability under section 4062(c) with respect to such plans as of the termination date in connection with any such prior termination.

1 “(B) PRIOR TERMINATIONS.—A plan ter-
2 mination described in this subparagraph is a
3 termination with respect to which—

4 “(i) the value of recoveries under sec-
5 tion 4062(c) have been determined by the
6 corporation, and

7 “(ii) notices of intent to terminate
8 were provided (or in the case of a termi-
9 nation by the corporation, a notice of de-
10 termination under section 4042 was
11 issued) during the 5-Federal fiscal year pe-
12 riod ending with the third fiscal year pre-
13 ceding the fiscal year in which occurs the
14 date of the notice of intent to terminate
15 (or the notice of determination under sec-
16 tion 4042) with respect to the plan termi-
17 nation for which the recovery ratio is being
18 determined.

19 “(C) EXCEPTION.—In the case of a termi-
20 nated plan with respect to which the out-
21 standing amount of benefit liabilities exceeds
22 \$20,000,000, the term ‘section 4062(c) recovery
23 ratio’ means, with respect to the termination of
24 such plan, the ratio of—

1 “(i) the value of the recoveries on be-
 2 half of the plan under section 4062(c), to

3 “(ii) the amount of the liability owed
 4 under section 4062(c) as of the date of
 5 plan termination to the trustee appointed
 6 under section 4042 (b) or (c).

7 “(3) SUBSECTION NOT TO APPLY.—This sub-
 8 section shall not apply with respect to the deter-
 9 mination of—

10 “(A) whether the amount of outstanding
 11 benefit liabilities exceeds \$20,000,000, or

12 “(B) the amount of any liability under sec-
 13 tion 4062 to the corporation or the trustee ap-
 14 pointed under section 4042 (b) or (c).

15 “(4) DETERMINATIONS.—Determinations under
 16 this subsection shall be made by the corporation.
 17 Such determinations shall be binding unless shown
 18 by clear and convincing evidence to be unreason-
 19 able.”

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply for any termination for which no-
 22 tices of intent to terminate are provided (or in the case
 23 of a termination by the corporation, a notice of determina-
 24 tion under section 4042 is issued) on or after the date

1 which is 30 days after the date of enactment of this sec-
 2 tion.

3 **SEC. 616. MULTIEMPLOYER PLAN FUNDING NOTICE.**

4 (a) IN GENERAL.—The Employee Retirement Income
 5 Security Act of 1974 is amended by inserting after section
 6 4011 the following new section:

7 **“SEC. 4012. MULTIEMPLOYER PLAN FUNDING NOTICE.**

8 “(a) NOTICE.—The plan administrator of a multiem-
 9 ployer plan shall, every three years, provide a notice to
 10 plan participants and beneficiaries of the plan’s funding
 11 status and the limits on the corporation’s guaranty.

12 “(b) TIME FOR PROVIDING NOTICE.—The notice
 13 under this section shall be provided no later than two
 14 months after the deadline (including extensions) for filing
 15 the annual report for the previous plan year and may be
 16 issued together with another document, including the sum-
 17 mary annual report required under section 104(b)(3).

18 “(c) FORM AND MANNER.—The notice under this
 19 section—

20 “(1) shall be provided in a form and manner
 21 prescribed in regulations of the corporation,

22 “(2) shall be written in a manner so as to be
 23 understood by the average plan participant, and

24 “(3) may be provided in written, electronic, or
 25 other appropriate form to the extent such form is

1 reasonably accessible to plan participants and bene-
 2 ficiaries.”

3 (b) CONFORMING AMENDMENT.—The table of sec-
 4 tions for title IV of such Act is amended by adding after
 5 the item related to section 4011 the following new item:
 “4012. Multiemployer plan funding notice.”

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to plan years beginning after De-
 8 cember 31, 2002.

9 **SEC. 617. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**
 10 **TION AS A RESULT OF PENSION ROLLOVERS.**

11 (a) IN GENERAL.—Paragraph (15)(A) of section
 12 3304(a) of the Internal Revenue Code of 1986 (relating
 13 to requirements for State unemployment laws) is amended
 14 by striking “and” at the end of clause (i) and by adding
 15 after clause (ii) the following new clause:

16 “(iii) such pension, retirement or re-
 17 tired pay, annuity, or similar payment is
 18 not includible in gross income of the indi-
 19 vidual for the taxable year in which paid
 20 because it was part of a rollover distribu-
 21 tion, and”.

22 (b) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to weeks beginning on or after the
 24 date of the enactment of this Act.

1 **SEC. 618. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**
 2 **ERNMENTAL SECTION 457 PLANS.**

3 (a) IN GENERAL.—Section 641(f) of the Economic
 4 Growth and Tax Relief Reconciliation Act of 2001 is
 5 amended by adding at the end the following new para-
 6 graph:

7 “(4) TRANSITION RULE FOR CERTAIN GOVERN-
 8 MENTAL PLANS.—In the case of distributions from
 9 an eligible deferred compensation plan of an em-
 10 ployer described in section 457(e)(1)(A) of the Inter-
 11 nal Revenue Code of 1986 which are made after De-
 12 cember 31, 2001, and which are part of a series of
 13 distributions which—

14 “(A) began before January 1, 2002, and

15 “(B) are payable for not less than 10
 16 years,

17 the Internal Revenue Code of 1986 may be applied
 18 to such distributions without regard to the amend-
 19 ments made by subsection (a)(1)(D).”

20 (b) EFFECTIVE DATE.—The amendment made by
 21 subsection (a) shall take effect as if included in the provi-
 22 sions of section 641 of the Economic Growth and Tax Re-
 23 lief Reconciliation Act of 2001.

1 **SEC. 619. TRANSFER OF PENSION PLAN LIABILITIES UPON**
2 **DISSOLUTION OF JOINT VENTURE.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), the transfer of liabilities from a defined benefit plan
5 maintained by an organization exempt from tax under the
6 Internal Revenue Code of 1986 (the “transferor plan”)
7 to a defined benefit plan which is a governmental plan
8 (under section 414(d) of the Internal Revenue Code of
9 1986 (the “transferee plan”)) shall be treated as meeting
10 the requirements of section 414(l) of such Code without
11 regard to whether any assets are transferred to the trans-
12 feree plan in connection with the transfer of liabilities.

13 (b) REQUIREMENTS.—Subsection (a) shall only apply
14 to a transfer if—

15 (1) before the date of the enactment of this
16 Act—

17 (A) the sponsor of the transferor plan is a
18 tax exempt organization which was formed as
19 part of a joint venture between an organization
20 exempt from tax under this subtitle and the
21 sponsor of the transferee plan;

22 (B) such joint venture ceased operations
23 within 3 years of its formation;

24 (C) after the formation of such joint ven-
25 ture but prior to its cessation of operations, no
26 contributions to the transferor plan were re-

1 quired under section 412 of the Internal Rev-
2 enue Code of 1986 and no contributions to the
3 transferor plan were made; and

4 (D) the agreements for dissolution of the
5 joint venture specifically provide for the trans-
6 fer of liabilities described in subsection (a);

7 (2) the liabilities transferred under subsection
8 (a) are primarily attributable to individuals who had
9 been participants in the transferee plan prior to the
10 formation of such joint venture, who had been par-
11 ticipants in the transferor plan after the formation
12 of such joint venture and before its dissolution, and
13 who became participants in the transferee plan after
14 the dissolution of such joint venture;

15 (3) both upon the cessation of the joint ven-
16 ture's operations and immediately after the transfer
17 of liabilities described in subsection (a), both the
18 transferor plan and the transferee plan have suffi-
19 cient assets to meet benefit liabilities (determined
20 under section 412 of the Internal Revenue Code
21 without regard to whether such section otherwise ap-
22 plies to the plan);

23 (4) the liabilities transferred under this para-
24 graph do not exceed 3 percent of the assets of the
25 transferee plan (determined in accordance with

1 standards established by the Government Accounting
2 Standards Board); and

3 (5) the transfer of liabilities described in sub-
4 section (a) occurs within 180 days of the date of the
5 enactment of this Act.

6 **Subtitle B—Studies**

7 **SEC. 621. STUDY REGARDING INSURANCE SYSTEM FOR IN-** 8 **DIVIDUAL ACCOUNT PLANS.**

9 (a) STUDY.—As soon as practicable after the date of
10 the enactment of this Act, the Pension Benefit Guaranty
11 Corporation shall undertake a study relating to the estab-
12 lishment of an insurance system for individual account
13 plans. In conducting such study, the Corporation shall
14 consider—

- 15 (1) the feasibility of such a system,
- 16 (2) the problem with insuring investments in
17 employer securities, and
- 18 (3) options for developing such a system.

19 (b) REPORT.—Not later than 2 years after the date
20 of the enactment of this Act, the Corporation shall report
21 the results of its study, together with any recommenda-
22 tions for legislative changes, to the Committees on Ways
23 and Means and Education and the Workforce of the
24 House of Representatives and the Committees on Finance

1 and Health, Education, Labor, and Pensions of the Sen-
2 ate.

3 **SEC. 622. STUDY REGARDING FEES CHARGED BY INDIVIDUAL ACCOUNT PLANS.**
4

5 (a) STUDY.—As soon as practicable after the date of
6 the enactment of this Act, the Secretary of Labor shall
7 undertake a study of the administrative and transaction
8 fees incurred by participants, beneficiaries, or plans in
9 connection with the investment of assets in their accounts
10 under individual account plans. In conducting such study,
11 the Secretary shall consider—

12 (1) how the fees compare to fees charged for
13 similar services provided to investors not in indi-
14 vidual account plans, and

15 (2) whether participants or beneficiaries are
16 adequately notified of the fees.

17 (b) REPORT.—Not later than 2 years after the date
18 of the enactment of this Act, the Secretary shall report
19 the results of its study, together with any recommenda-
20 tions for legislative changes, to the Committees on Ways
21 and Means and Education and the Workforce of the
22 House of Representatives and the Committees on Finance
23 and Health, Education, Labor, and Pensions of the Sen-
24 ate.

1 **SEC. 623. JOINT STUDY ON REVITALIZING DEFINED BEN-**
2 **EFIT PLANS.**

3 (a) STUDY.—As soon as practicable after the date of
4 enactment of this Act, the Secretary of the Treasury, the
5 Secretary of Labor, and the Executive Director of the
6 Pension Benefit Guaranty Corporation shall jointly under-
7 take a study on ways to revitalize interest in defined ben-
8 efit plans among employers. In conducting such study, the
9 Secretaries and the Executive Director shall consider—

10 (1) ways to encourage the establishment of de-
11 fined benefit plans by small- and mid-sized employ-
12 ers,

13 (2) ways to encourage the continued mainte-
14 nance of defined benefit plans by larger employers,
15 and

16 (3) legislative proposals to accomplish the objec-
17 tives described in paragraphs (1) and (2).

18 (b) REPORT.—Not later than 2 years after the date
19 of the enactment of this Act, the Secretaries and the Exec-
20 utive Director shall report the results of the study, to-
21 gether with any recommendations for legislative changes,
22 to the Committees on Ways and Means and Education and
23 the Workforce of the House of Representatives and the
24 Committees on Finance and Health, Education, Labor,
25 and Pensions of the Senate.

1 **SEC. 624. STUDY ON FLOOR-OFFSET ESOPS.**

2 (a) STUDY.—As soon as practicable after the date of
 3 the enactment of this Act, the Pension Benefit Guaranty
 4 Corporation shall undertake a study to determine the
 5 number of floor-offset employee stock ownership plans still
 6 in existence and the extent to which such plans pose a
 7 risk to plan participants or beneficiaries and to the Cor-
 8 poration. Such study shall consider legislative proposals
 9 to address such risks.

10 (b) REPORT.—Not later than 1 year after the date
 11 of the enactment of this Act, the Corporation shall report
 12 the results of its study, together with any recommenda-
 13 tions for legislative changes, to the Committees on Ways
 14 and Means and Education and the Workforce of the
 15 House of Representatives and the Committees on Finance
 16 and Health, Education, Labor, and Pensions of the Sen-
 17 ate.

18 **Subtitle C—Plan Amendments**

19 **SEC. 631. PROVISIONS RELATING TO PLAN AMENDMENTS.**

20 (a) IN GENERAL.—If this section applies to any plan
 21 or contract amendment—

22 (1) such plan or contract shall be treated as
 23 being operated in accordance with the terms of the
 24 plan during the period described in subsection

25 (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under such Acts, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2005.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting “2007” for “2005”.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

1 (A) during the period—

2 (i) beginning on the date the legisla-
 3 tive or regulatory amendment described in
 4 paragraph (1)(A) takes effect (or in the
 5 case of a plan or contract amendment not
 6 required by such legislative or regulatory
 7 amendment, the effective date specified by
 8 the plan), and

9 (ii) ending on the date described in
 10 paragraph (1)(B) (or, if earlier, the date
 11 the plan or contract amendment is adopt-
 12 ed),

13 the plan or contract is operated as if such plan
 14 or contract amendment were in effect; and

15 (B) such plan or contract amendment ap-
 16 plies retroactively for such period.

17 **TITLE VII—REVENUE OFFSETS**

18 **SEC. 700. AMENDMENT OF 1986 CODE.**

19 Except as otherwise expressly provided, whenever in
 20 this Act an amendment or repeal is expressed in terms
 21 of an amendment to, or repeal of, a section or other provi-
 22 sion, the reference shall be considered to be made to a
 23 section or other provision of the Internal Revenue Code
 24 of 1986.

1 **Subtitle A—Reversing the** 2 **Expatriation of Profits Offshore**

3 **SEC. 701. TAX TREATMENT OF INVERTED CORPORATE EN-** 4 **TITIES.**

5 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
6 lating to provisions affecting more than one subtitle) is
7 amended by adding at the end the following new section:

8 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE** 9 **ENTITIES.**

10 “(a) INVERTED CORPORATIONS TREATED AS DOMES-
11 TIC CORPORATIONS.—

12 “(1) IN GENERAL.—If a foreign incorporated
13 entity is treated as an inverted domestic corporation,
14 then, notwithstanding section 7701(a)(4), such enti-
15 ty shall be treated for purposes of this title as a do-
16 mestic corporation.

17 “(2) INVERTED DOMESTIC CORPORATION.—For
18 purposes of this section, a foreign incorporated enti-
19 ty shall be treated as an inverted domestic corpora-
20 tion if, pursuant to a plan (or a series of related
21 transactions)—

22 “(A) the entity completes after March 20,
23 2002, the direct or indirect acquisition of sub-
24 stantially all of the properties held directly or
25 indirectly by a domestic corporation or substan-

1 tially all of the properties constituting a trade
2 or business of a domestic partnership,

3 “(B) after the acquisition at least 80 per-
4 cent of the stock (by vote or value) of the entity
5 is held—

6 “(i) in the case of an acquisition with
7 respect to a domestic corporation, by
8 former shareholders of the domestic cor-
9 poration by reason of holding stock in the
10 domestic corporation, or

11 “(ii) in the case of an acquisition with
12 respect to a domestic partnership, by
13 former partners of the domestic partner-
14 ship by reason of holding a capital or prof-
15 its interest in the domestic partnership,
16 and

17 “(C) the expanded affiliated group which
18 after the acquisition includes the entity does
19 not have substantial business activities in the
20 foreign country in which or under the law of
21 which the entity is created or organized when
22 compared to the total business activities of such
23 expanded affiliated group.

1 “(b) PRESERVATION OF DOMESTIC TAX BASE IN
2 CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-
3 SECTION (a) DOES NOT APPLY.—

4 “(1) IN GENERAL.—If a foreign incorporated
5 entity would be treated as an inverted domestic cor-
6 poration with respect to an acquired entity if ei-
7 ther—

8 “(A) subsection (a)(2)(A) were applied by
9 substituting ‘after December 31, 1996, and on
10 or before March 20, 2002’ for ‘after March 20,
11 2002’ and subsection (a)(2)(B) were applied by
12 substituting ‘more than 50 percent’ for ‘at least
13 80 percent’, or

14 “(B) subsection (a)(2)(B) were applied by
15 substituting ‘more than 50 percent’ for ‘at least
16 80 percent’,

17 then the rules of subsection (c) shall apply to any
18 inversion gain of the acquired entity during the ap-
19 plicable period and the rules of subsection (d) shall
20 apply to any related party transaction of the ac-
21 quired entity during the applicable period. This sub-
22 section shall not apply for any taxable year if sub-
23 section (a) applies to such foreign incorporated enti-
24 ty for such taxable year.

1 “(2) ACQUIRED ENTITY.—For purposes of this
2 section—

3 “(A) IN GENERAL.—The term ‘acquired
4 entity’ means the domestic corporation or part-
5 nership substantially all of the properties of
6 which are directly or indirectly acquired in an
7 acquisition described in subsection (a)(2)(A) to
8 which this subsection applies.

9 “(B) AGGREGATION RULES.—Any domes-
10 tic person bearing a relationship described in
11 section 267(b) or 707(b) to an acquired entity
12 shall be treated as an acquired entity with re-
13 spect to the acquisition described in subpara-
14 graph (A).

15 “(3) APPLICABLE PERIOD.—For purposes of
16 this section—

17 “(A) IN GENERAL.—The term ‘applicable
18 period’ means the period—

19 “(i) beginning on the first date prop-
20 erties are acquired as part of the acquisi-
21 tion described in subsection (a)(2)(A) to
22 which this subsection applies, and

23 “(ii) ending on the date which is 10
24 years after the last date properties are ac-
25 quired as part of such acquisition.

1 “(B) SPECIAL RULE FOR INVERSIONS OC-
 2 CURRING BEFORE MARCH 21, 2002.—In the case
 3 of any acquired entity to which paragraph
 4 (1)(A) applies, the applicable period shall be the
 5 10-year period beginning on January 1, 2002.

6 “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-
 7 SET.—If subsection (b) applies—

8 “(1) IN GENERAL.—The taxable income of an
 9 acquired entity (or any expanded affiliated group
 10 which includes such entity) for any taxable year
 11 which includes any portion of the applicable period
 12 shall in no event be less than the inversion gain of
 13 the entity for the taxable year.

14 “(2) CREDITS NOT ALLOWED AGAINST TAX ON
 15 INVERSION GAIN.—Credits shall be allowed against
 16 the tax imposed by this chapter on an acquired enti-
 17 ty for any taxable year described in paragraph (1)
 18 only to the extent such tax exceeds the product of—

19 “(A) the amount of the inversion gain for
 20 the taxable year, and

21 “(B) the highest rate of tax specified in
 22 section 11(b)(1).

23 The credit allowed by section 901 may be taken into
 24 account under the preceding sentence only to the ex-
 25 tent of the product of such highest rate and the

1 amount of taxable income from sources without the
 2 United States that is not inversion gain.

3 “(3) SPECIAL RULES FOR PARTNERSHIPS.—In
 4 the case of an acquired entity which is a partner-
 5 ship—

6 “(A) the limitations of this subsection shall
 7 apply at the partner rather than the partner-
 8 ship level,

9 “(B) the inversion gain of any partner for
 10 any taxable year shall be equal to the sum of—

11 “(i) the partner’s distributive share of
 12 inversion gain of the partnership for such
 13 taxable year, plus

14 “(ii) income or gain required to be
 15 recognized for the taxable year by the part-
 16 ner under section 367(a), 741, or 1001, or
 17 under any other provision of chapter 1, by
 18 reason of the transfer during the applica-
 19 ble period of any partnership interest of
 20 the partner in such partnership to the for-
 21 eign incorporated entity, and

22 “(C) the highest rate of tax specified in
 23 the rate schedule applicable to the partner
 24 under chapter 1 shall be substituted for the
 25 rate of tax under paragraph (2)(B).

1 “(4) INVERSION GAIN.—For purposes of this
 2 section, the term ‘inversion gain’ means any income
 3 or gain required to be recognized under section 304,
 4 311(b), 367, 1001, or 1248, or under any other pro-
 5 vision of chapter 1, by reason of the transfer during
 6 the applicable period of stock or other properties by
 7 an acquired entity—

8 “(A) as part of the acquisition described in
 9 subsection (a)(2)(A) to which subsection (b) ap-
 10 plies, or

11 “(B) after such acquisition to a foreign re-
 12 lated person.

13 The Secretary may provide that income or gain from
 14 the sale of inventories or other transactions in the
 15 ordinary course of a trade or business shall not be
 16 treated as inversion gain under subparagraph (B) to
 17 the extent the Secretary determines such treatment
 18 would not be inconsistent with the purposes of this
 19 section.

20 “(5) COORDINATION WITH SECTION 172 AND
 21 MINIMUM TAX.—Rules similar to the rules of para-
 22 graphs (3) and (4) of section 860E(a) shall apply
 23 for purposes of this section.

24 “(6) STATUTE OF LIMITATIONS.—

1 “(A) IN GENERAL.—The statutory period
 2 for the assessment of any deficiency attrib-
 3 utable to the inversion gain of any taxpayer for
 4 any pre-inversion year shall not expire before
 5 the expiration of 3 years from the date the Sec-
 6 retary is notified by the taxpayer (in such man-
 7 ner as the Secretary may prescribe) of the ac-
 8 quisition described in subsection (a)(2)(A) to
 9 which such gain relates and such deficiency
 10 may be assessed before the expiration of such
 11 3-year period notwithstanding the provisions of
 12 any other law or rule of law which would other-
 13 wise prevent such assessment.

14 “(B) PRE-INVERSION YEAR.—For purposes
 15 of subparagraph (A), the term ‘pre-inversion
 16 year’ means any taxable year if—

17 “(i) any portion of the applicable pe-
 18 riod is included in such taxable year, and

19 “(ii) such year ends before the taxable
 20 year in which the acquisition described in
 21 subsection (a)(2)(A) is completed.

22 “(d) SPECIAL RULES APPLICABLE TO RELATED
 23 PARTY TRANSACTIONS.—

24 “(1) ANNUAL APPLICATION FOR AGREEMENTS
 25 ON RETURN POSITIONS.—

1 “(A) IN GENERAL.—Each acquired entity
2 to which subsection (b) applies shall file with
3 the Secretary an application for an approval
4 agreement under subparagraph (D) for each
5 taxable year which includes a portion of the ap-
6 plicable period. Such application shall be filed
7 at such time and manner, and shall contain
8 such information, as the Secretary may pre-
9 scribe.

10 “(B) SECRETARIAL ACTION.—Within 90
11 days of receipt of an application under subpara-
12 graph (A) (or such longer period as the Sec-
13 retary and entity may agree upon), the Sec-
14 retary shall—

15 “(i) enter into an agreement described
16 in subparagraph (D) for the taxable year
17 covered by the application,

18 “(ii) notify the entity that the Sec-
19 retary has determined that the application
20 was filed in good faith and substantially
21 complies with the requirements for the ap-
22 plication under subparagraph (A), or

23 “(iii) notify the entity that the Sec-
24 retary has determined that the application

1 was not filed in good faith or does not sub-
2 stantially comply with such requirements.

3 If the Secretary fails to act within the time pre-
4 scribed under the preceding sentence, the entity
5 shall be treated for purposes of this paragraph
6 as having received notice under clause (ii).

7 “(C) FAILURES TO COMPLY.—If an ac-
8 quired entity fails to file an application under
9 subparagraph (A), or the acquired entity re-
10 ceives a notice under subparagraph (B)(iii), for
11 any taxable year, then for such taxable year—

12 “(i) there shall not be allowed any de-
13 duction, or addition to basis or cost of
14 goods sold, for amounts paid or incurred,
15 or losses incurred, by reason of a trans-
16 action between the acquired entity and a
17 foreign related person,

18 “(ii) any transfer or license of intan-
19 gible property (as defined in section
20 936(h)(3)(B)) between the acquired entity
21 and a foreign related person shall be dis-
22 regarded, and

23 “(iii) any cost-sharing arrangement
24 between the acquired entity and a foreign
25 related person shall be disregarded.

1 “(D) APPROVAL AGREEMENT.—For pur-
 2 poses of subparagraph (A), the term ‘approval
 3 agreement’ means a prefilling, advance pricing,
 4 or other agreement specified by the Secretary
 5 which contains such provisions as the Secretary
 6 determines necessary to ensure that the require-
 7 ments of sections 163(j), 267(a)(3), 482, and
 8 845, and any other provision of this title appli-
 9 cable to transactions between related persons
 10 and specified by the Secretary, are met.

11 “(2) MODIFICATIONS OF LIMITATION ON INTER-
 12 EST DEDUCTION.—In the case of an acquired entity
 13 to which subsection (b) applies, section 163(j) shall
 14 be applied—

15 “(A) without regard to paragraph
 16 (2)(A)(ii) thereof, and

17 “(B) by substituting ‘25 percent’ for ‘50
 18 percent’ each place it appears in paragraph
 19 (2)(B) thereof.

20 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
 21 For purposes of this section—

22 “(1) RULES FOR APPLICATION OF SUBSECTION
 23 (a)(2).—In applying subsection (a)(2) for purposes of
 24 subsections (a) and (b), the following rules shall
 25 apply:

1 “(A) CERTAIN STOCK DISREGARDED.—

2 There shall not be taken into account in deter-
3 mining ownership for purposes of subsection
4 (a)(2)(B)—

5 “(i) stock held by members of the ex-
6 panded affiliated group which includes the
7 foreign incorporated entity, or

8 “(ii) stock of such entity which is sold
9 in a public offering related to the acquisi-
10 tion described in subsection (a)(2)(A).

11 “(B) PLAN DEEMED IN CERTAIN CASES.—

12 If a foreign incorporated entity acquires directly
13 or indirectly substantially all of the properties
14 of a domestic corporation or partnership during
15 the 4-year period beginning on the date which
16 is 2 years before the ownership requirements of
17 subsection (a)(2)(B) are met with respect to
18 such domestic corporation or partnership, such
19 actions shall be treated as pursuant to a plan.

20 “(C) CERTAIN TRANSFERS DIS-
21 REGARDED.—The transfer of properties or li-
22 abilities (including by contribution or distribu-
23 tion) shall be disregarded if such transfers are
24 part of a plan a principal purpose of which is
25 to avoid the purposes of this section.

1 “(D) SPECIAL RULE FOR RELATED PART-
 2 NERSHIPS.—For purposes of applying sub-
 3 section (a)(2) to the acquisition of a domestic
 4 partnership, except as provided in regulations,
 5 all partnerships which are under common con-
 6 trol (within the meaning of section 482) shall
 7 be treated as 1 partnership.

8 “(E) TREATMENT OF CERTAIN RIGHTS.—
 9 The Secretary shall prescribe such regulations
 10 as may be necessary—

11 “(i) to treat warrants, options, con-
 12 tracts to acquire stock, convertible debt in-
 13 struments, and other similar interests as
 14 stock, and

15 “(ii) to treat stock as not stock.

16 “(2) EXPANDED AFFILIATED GROUP.—The
 17 term ‘expanded affiliated group’ means an affiliated
 18 group as defined in section 1504(a) but without re-
 19 gard to section 1504(b)(3), except that section
 20 1504(a) shall be applied by substituting ‘more than
 21 50 percent’ for ‘at least 80 percent’ each place it ap-
 22 pears.

23 “(3) FOREIGN INCORPORATED ENTITY.—The
 24 term ‘foreign incorporated entity’ means any entity
 25 which is, or but for subsection (a)(1) would be,

1 treated as a foreign corporation for purposes of this
2 title.

3 “(4) FOREIGN RELATED PERSON.—The term
4 ‘foreign related person’ means, with respect to any
5 acquired entity, a foreign person which—

6 “(A) bears a relationship to such entity de-
7 scribed in section 267(b) or 707(b), or

8 “(B) is under the same common control
9 (within the meaning of section 482) as such en-
10 tity.

11 “(5) SUBSEQUENT ACQUISITIONS BY UNRE-
12 LATED DOMESTIC CORPORATIONS.—

13 “(A) IN GENERAL.—Subject to such condi-
14 tions, limitations, and exceptions as the Sec-
15 retary may prescribe, if, after an acquisition de-
16 scribed in subsection (a)(2)(A) to which sub-
17 section (b) applies, a domestic corporation stock
18 of which is traded on an established securities
19 market acquires directly or indirectly any prop-
20 erties of one or more acquired entities in a
21 transaction with respect to which the require-
22 ments of subparagraph (B) are met, this sec-
23 tion shall cease to apply to any such acquired
24 entity with respect to which such requirements
25 are met.

1 “(B) REQUIREMENTS.—The requirements
2 of the subparagraph are met with respect to a
3 transaction involving any acquisition described
4 in subparagraph (A) if—

5 “(i) before such transaction the do-
6 mestic corporation did not have a relation-
7 ship described in section 267(b) or 707(b),
8 and was not under common control (within
9 the meaning of section 482), with the ac-
10 quired entity, or any member of an ex-
11 panded affiliated group including such en-
12 tity, and

13 “(ii) after such transaction, such ac-
14 quired entity—

15 “(I) is a member of the same ex-
16 panded affiliated group which includes
17 the domestic corporation or has such
18 a relationship or is under such com-
19 mon control with any member of such
20 group, and

21 “(II) is not a member of, and
22 does not have such a relationship and
23 is not under such common control
24 with any member of, the expanded af-

1 filiated group which before such ac-
2 quisition included such entity.

3 “(f) REGULATIONS.—The Secretary shall provide
4 such regulations as are necessary to carry out this section,
5 including regulations providing for such adjustments to
6 the application of this section as are necessary to prevent
7 the avoidance of the purposes of this section, including the
8 avoidance of such purposes through—

9 “(1) the use of related persons, pass-through or
10 other noncorporate entities, or other intermediaries,
11 or

12 “(2) transactions designed to have persons
13 cease to be (or not become) members of expanded
14 affiliated groups or related persons.”

15 (b) TREATMENT OF AGREEMENTS.—

16 (1) CONFIDENTIALITY.—

17 (A) TREATMENT AS RETURN INFORMA-
18 TION.—Section 6103(b)(2) (relating to return
19 information) is amended by striking “and” at
20 the end of subparagraph (C), by inserting
21 “and” at the end of subparagraph (D), and by
22 inserting after subparagraph (D) the following
23 new subparagraph:

24 “(E) any approval agreement under section
25 7874(d)(1) to which any preceding subpara-

graph does not apply and any background information related to the agreement or any application for the agreement.”.

(B) EXCEPTION FROM PUBLIC INSPECTION AS WRITTEN DETERMINATION.—Section 6110(b)(1)(B) is amended by striking “or (D)” and inserting “, (D), or (E)”.

(2) REPORTING.—The Secretary of the Treasury shall include with any report on advance pricing agreements required to be submitted after the date of the enactment of this Act under section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) a report regarding approval agreements under section 7874(d)(1) of the Internal Revenue Code of 1986. Such report shall include information similar to the information required with respect to advance pricing agreements and shall be treated for confidentiality purposes in the same manner as the reports on advance pricing agreements are treated under section 521(b)(3) of such Act.

(c) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary’s authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as

1 added by subsection (a)) applies to report to the Secretary,
 2 shareholders, partners, and such other persons as the Sec-
 3 retary may prescribe such information as is necessary to
 4 ensure the proper tax treatment of such transactions.

5 (d) CONFORMING AMENDMENT.—The table of sec-
 6 tions for subchapter C of chapter 80 is amended by adding
 7 at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”

8 (e) TRANSITION RULE FOR CERTAIN REGULATED
 9 INVESTMENT COMPANIES AND UNIT INVESTMENT
 10 TRUSTS.—

11 (1) IN GENERAL.—Notwithstanding section
 12 7874 of the Internal Revenue Code of 1986 (as
 13 added by subsection (a)), a regulated investment
 14 company, or other pooled fund or trust specified by
 15 the Secretary of the Treasury, may elect to recog-
 16 nize gain by reason of section 367(a) of such Code
 17 with respect to a transaction under which a foreign
 18 incorporated entity is treated as an inverted domes-
 19 tic corporation under section 7874(a) of such Code
 20 by reason of an acquisition completed after March
 21 20, 2002, and before January 1, 2003.

22 (2) APPLICATION OF EXCISE TAX.—For pur-
 23 poses of section 4982 of such Code, gain described
 24 in paragraph (1) which would otherwise be taken

1 into account for calendar year 2002 shall be taken
 2 into account for calendar year 2003.

3 **SEC. 702. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
 4 **ERS IN INVERTED CORPORATIONS.**

5 (a) IN GENERAL.—Subtitle D is amended by adding
 6 at the end the following new chapter:

7 **“CHAPTER 48—STOCK COMPENSATION OF**
 8 **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corpora-
 tions entities.

9 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
 10 **VERTED CORPORATIONS.**

11 “(a) IMPOSITION OF TAX.—In the case of an indi-
 12 vidual who is a disqualified individual with respect to any
 13 inverted corporation, there is hereby imposed on such per-
 14 son a tax equal to 20 percent of the value (determined
 15 under subsection (b)) of the specified stock compensation
 16 held (directly or indirectly) by or for the benefit of such
 17 individual or a member of such individual’s family (as de-
 18 fined in section 267) at any time during the 12-month
 19 period beginning on the date which is 6 months before
 20 the inversion date.

21 “(b) VALUE.—For purposes of subsection (a)—

22 “(1) IN GENERAL.—The value of specified stock
 23 compensation shall be—

1 “(A) in the case of a stock option (or other
2 similar right) or any stock appreciation right,
3 the fair value of such option or right, and

4 “(B) in any other case, the fair market
5 value of such compensation.

6 “(2) DATE FOR DETERMINING VALUE.—The
7 determination of value shall be made—

8 “(A) in the case of specified stock com-
9 pensation held on the inversion date, on such
10 date,

11 “(B) in the case of such compensation
12 which is canceled during the 6 months before
13 the inversion date, on the day before such can-
14 cellation, and

15 “(C) in the case of such compensation
16 which is granted after the inversion date, on the
17 date such compensation is granted.

18 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
19 RECOGNIZED.—Subsection (a) shall apply to any disquali-
20 fied individual with respect to an inverted corporation only
21 if gain (if any) on any stock in such corporation is recog-
22 nized in whole or part by any shareholder by reason of
23 the acquisition referred to in section 7874(a)(2)(A) (deter-
24 mined by substituting ‘July 10, 2002’ for ‘March 20,
25 2002’) with respect to such corporation.

1 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
2 COMPENSATION.—Subsection (a) shall not apply to—

3 “(1) any stock option which is exercised on the
4 inversion date or during the 6-month period before
5 such date and to the stock acquired in such exercise,
6 and

7 “(2) any specified stock compensation which is
8 sold, exchanged, or distributed during such period in
9 a transaction in which gain or loss is recognized in
10 full.

11 “(e) DEFINITIONS.—For purposes of this section—

12 “(1) DISQUALIFIED INDIVIDUAL.—The term
13 ‘disqualified individual’ means, with respect to a cor-
14 poration, any individual who, at any time during the
15 12-month period beginning on the date which is 6
16 months before the inversion date—

17 “(A) is subject to the requirements of sec-
18 tion 16(a) of the Securities Exchange Act of
19 1934 with respect to such corporation or any
20 member of the expanded affiliated group which
21 includes such corporation, or

22 “(B) would be subject to such require-
23 ments if such corporation or member were an
24 issuer of equity securities referred to in such
25 section.

1 “(2) INVERTED CORPORATION; INVERSION
2 DATE.—

3 “(A) INVERTED CORPORATION.—The term
4 ‘inverted corporation’ means any corporation to
5 which subsection (a) or (b) of section 7874 ap-
6 plies determined—

7 “(i) by substituting ‘July 10, 2002’
8 for ‘March 20, 2002’ in section
9 7874(a)(2)(A), and
10 “(ii) without regard to subsection
11 (b)(1)(A).

12 Such term includes any predecessor or suc-
13 cessor of such a corporation.

14 “(B) INVERSION DATE.—The term ‘inver-
15 sion date’ means, with respect to a corporation,
16 the date on which the corporation first becomes
17 an inverted corporation.

18 “(3) SPECIFIED STOCK COMPENSATION.—

19 “(A) IN GENERAL.—The term ‘specified
20 stock compensation’ means payment (or right
21 to payment) granted by the inverted corpora-
22 tion (or by any member of the expanded affili-
23 ated group which includes such corporation) to
24 any person in connection with the performance
25 of services by a disqualified individual for such

1 corporation or member if the value of such pay-
 2 ment or right is based on (or determined by ref-
 3 erence to) the value (or change in value) of
 4 stock in such corporation (or any such mem-
 5 ber).

6 “(B) EXCEPTIONS.—Such term shall not
 7 include—

8 “(i) any option to which part II of
 9 subchapter D of chapter 1 applies, or

10 “(ii) any payment or right to payment
 11 from a plan referred to in section
 12 280G(b)(6).

13 “(4) EXPANDED AFFILIATED GROUP.—The
 14 term ‘expanded affiliated group’ means an affiliated
 15 group (as defined in section 1504(a) without regard
 16 to section 1504(b)(3)); except that section 1504(a)
 17 shall be applied by substituting ‘more than 50 per-
 18 cent’ for ‘at least 80 percent’ each place it appears.

19 “(f) SPECIAL RULES.—For purposes of this sec-
 20 tion—

21 “(1) CANCELLATION OF RESTRICTION.—The
 22 cancellation of a restriction which by its terms will
 23 never lapse shall be treated as a grant.

24 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
 25 CORPORATION TREATED AS SPECIFIED STOCK COM-

1 PENSATION.—Any payment of the tax imposed by
 2 this section directly or indirectly by the inverted cor-
 3 poration or by any member of the expanded affili-
 4 ated group which includes such corporation—

5 “(A) shall be treated as specified stock
 6 compensation, and

7 “(B) shall not be allowed as a deduction
 8 under any provision of chapter 1.

9 “(3) CERTAIN RESTRICTIONS IGNORED.—
 10 Whether there is specified stock compensation, and
 11 the value thereof, shall be determined without regard
 12 to any restriction other than a restriction which by
 13 its terms will never lapse.

14 “(4) PROPERTY TRANSFERS.—Any transfer of
 15 property shall be treated as a payment and any right
 16 to a transfer of property shall be treated as a right
 17 to a payment.

18 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
 19 For purposes of subtitle F, any tax imposed by this
 20 section shall be treated as a tax imposed by subtitle
 21 A.

22 “(g) REGULATIONS.—The Secretary shall prescribe
 23 such regulations as may be necessary or appropriate to
 24 carry out the purposes of this section.”

25 (b) DENIAL OF DEDUCTION.—

1 (1) IN GENERAL.—Paragraph (6) of section
2 275(a) is amended by inserting “48,” after “46,”.

3 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
4 PENSATION REDUCED BY PAYMENT OF EXCISE TAX
5 ON SPECIFIED STOCK COMPENSATION.—Paragraph
6 (4) of section 162(m) is amended by adding at the
7 end the following new subparagraph:

8 “(G) COORDINATION WITH EXCISE TAX ON
9 SPECIFIED STOCK COMPENSATION.—The dollar
10 limitation contained in paragraph (1) with re-
11 spect to any covered employee shall be reduced
12 (but not below zero) by the amount of any pay-
13 ment (with respect to such employee) of the tax
14 imposed by section 5000A directly or indirectly
15 by the inverted corporation (as defined in such
16 section) or by any member of the expanded af-
17 filiated group (as defined in such section) which
18 includes such corporation.”

19 (c) CONFORMING AMENDMENTS.—

20 (1) The last sentence of section 3121(v)(2)(A)
21 is amended by inserting before the period “or to any
22 specified stock compensation (as defined in section
23 5000A) on which tax is imposed by section 5000A”.

1 (2) The table of chapters for subtitle D is
 2 amended by adding at the end the following new
 3 item:

“Chapter 48. Stock compensation of insiders in inverted corporations.”

4 (d) **EFFECTIVE DATE.**—The amendments made by
 5 this section shall take effect on July 11, 2002; except that
 6 periods before such date shall not be taken into account
 7 in applying the periods in subsections (a) and (e)(1) of
 8 section 5000A of the Internal Revenue Code of 1986, as
 9 added by this section.

10 **SEC. 703. REINSURANCE OF UNITED STATES RISKS IN FOR-**
 11 **EIGN JURISDICTIONS.**

12 (a) **IN GENERAL.**—Section 845(a) (relating to alloca-
 13 tion in case of reinsurance agreement involving tax avoid-
 14 ance or evasion) is amended by striking “source and char-
 15 acter” and inserting “amount, source, or character”.

16 (b) **EFFECTIVE DATE.**—The amendments made by
 17 this section shall apply to any risk reinsured after April
 18 11, 2002.

19 **SEC. 704. STUDY OF DEDUCTIBILITY OF INTEREST ON RE-**
 20 **LATED-PARTY DEBT.**

21 (a) **IN GENERAL.**—The Secretary of the Treasury
 22 shall conduct a study of the effectiveness of the current
 23 rules limiting the deductibility for Federal income tax pur-

1 poses of interest paid or incurred on related-party indebt-
2 edness, including a study of—

3 (1) whether or not there is a need to modify the
4 rules to prevent United States subsidiaries of foreign
5 corporations from shifting income outside of the
6 United States for Federal income tax purposes, and

7 (2) whether or not current United States in-
8 come tax treaties allow the inappropriate shifting of
9 income outside of the United States for Federal in-
10 come tax purposes.

11 (b) REPORT.—The Secretary of the Treasury shall,
12 not later than March 1, 2003, submit to the Committee
13 on Ways and Means of the House of Representatives and
14 the Committee on Finance of the Senate the results of
15 the study under subsection (a), including such rec-
16 ommendations for legislation or changes in treaty policy
17 as the Secretary determines appropriate.

1 **Subtitle B—Provisions Relating to**
 2 **Tax Shelters**

3 **PART I—ECONOMIC SUBSTANCE DOCTRINE AND**
 4 **TAX SHELTER TRANSPARENCY**

5 **SEC. 711. PENALTY FOR FAILING TO DISCLOSE REPORT-**
 6 **ABLE TRANSACTION.**

7 (a) IN GENERAL.—Part I of subchapter B of chapter
 8 68 (relating to assessable penalties) is amended by insert-
 9 ing after section 6707 the following new section:

10 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
 11 **ABLE TRANSACTION INFORMATION WITH RE-**
 12 **TURN OR STATEMENT.**

13 “(a) IMPOSITION OF PENALTY.—Any person who
 14 fails to include on any return or statement any informa-
 15 tion with respect to a reportable transaction which is re-
 16 quired under section 6011 to be included with such return
 17 or statement shall pay a penalty in the amount determined
 18 under subsection (b).

19 “(b) AMOUNT OF PENALTY.—

20 “(1) IN GENERAL.—Except as provided in para-
 21 graphs (2) and (3), the amount of the penalty under
 22 subsection (a) shall be \$50,000.

23 “(2) LISTED TRANSACTION.—The amount of
 24 the penalty under subsection (a) with respect to a
 25 listed transaction shall be \$100,000.

1 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
2 TIES AND HIGH NET WORTH INDIVIDUALS.—

3 “(A) IN GENERAL.—In the case of a fail-
4 ure under subsection (a) by—

5 “(i) a large entity, or

6 “(ii) a high net worth individual,
7 the penalty under paragraph (1) or (2) shall be
8 twice the amount determined without regard to
9 this paragraph.

10 “(B) LARGE ENTITY.—For purposes of
11 subparagraph (A), the term ‘large entity’
12 means, with respect to any taxable year, a per-
13 son (other than a natural person) with gross re-
14 ceipts in excess of \$10,000,000 for the taxable
15 year in which the reportable transaction occurs
16 or the preceding taxable year. Rules similar to
17 the rules of paragraph (2) and subparagraphs
18 (B), (C), and (D) of paragraph (3) of section
19 448(c) shall apply for purposes of this subpara-
20 graph.

21 “(C) HIGH NET WORTH INDIVIDUAL.—The
22 term ‘high net worth individual’ means, with re-
23 spect to a reportable transaction, a natural per-
24 son whose net worth exceeds \$2,000,000 imme-
25 diately before the transaction.

1 “(c) DEFINITIONS.—For purposes of this section—

2 “(1) REPORTABLE TRANSACTION.—The term
3 ‘reportable transaction’ means any transaction with
4 respect to which information is required to be in-
5 cluded with a return or statement because, as deter-
6 mined under regulations prescribed under section
7 6011, such transaction is of a type which the Sec-
8 retary determines as having a potential for tax
9 avoidance or evasion.

10 “(2) LISTED TRANSACTION.—The term ‘listed
11 transaction’ means a reportable transaction which is
12 the same as, or similar to, a transaction specifically
13 identified by the Secretary as a tax avoidance trans-
14 action for purposes of section 6011.

15 “(d) AUTHORITY TO RESCIND PENALTY.—

16 “(1) IN GENERAL.—The Commissioner of In-
17 ternal Revenue may rescind all or any portion of any
18 penalty imposed by this section with respect to any
19 violation if—

20 “(A) the violation is with respect to a re-
21 portable transaction other than a listed trans-
22 action,

23 “(B) the person on whom the penalty is
24 imposed has a history of complying with the re-
25 quirements of this title,

1 “(C) it is shown that the violation is due
2 to an unintentional mistake of fact;

3 “(D) imposing the penalty would be
4 against equity and good conscience, and

5 “(E) rescinding the penalty would promote
6 compliance with the requirements of this title
7 and effective tax administration.

8 “(2) DISCRETION.—The exercise of authority
9 under paragraph (1) shall be at the sole discretion
10 of the Commissioner and may be delegated only to
11 the head of the Office of Tax Shelter Analysis. The
12 Commissioner, in his sole discretion, may establish a
13 procedure to determine if a penalty should be re-
14 ferred to the Commissioner or the head of such Of-
15 fice for a determination under paragraph (1).

16 “(3) NO APPEAL.—Notwithstanding any other
17 provision of law, any determination under this sub-
18 section may not be reviewed in any administrative or
19 judicial proceeding.

20 “(4) RECORDS.—If a penalty is rescinded under
21 paragraph (1), the Commissioner shall place in the
22 file in the Office of the Commissioner the opinion of
23 the Commissioner or the head of the Office of Tax
24 Shelter Analysis with respect to the determination,
25 including—

1 “(A) a statement of the facts and cir-
2 cumstances relating to the violation,

3 “(B) the reasons for the rescission, and

4 “(C) the amount of the penalty rescinded.

5 “(5) REPORT.—The Commissioner shall each
6 year report to the Committee on Ways and Means
7 of the House of Representatives and the Committee
8 on Finance of the Senate—

9 “(A) a summary of the total number and
10 aggregate amount of penalties imposed, and re-
11 scinded, under this section, and

12 “(B) a description of each penalty re-
13 scinded under this subsection and the reasons
14 therefor.

15 “(e) PENALTY REPORTED TO SEC.—In the case of
16 a person—

17 “(1) which is required to file periodic reports
18 under section 13 or 15(d) of the Securities Ex-
19 change Act of 1934 or is required to be consolidated
20 with another person for purposes of such reports,
21 and

22 “(2) which—

23 “(A) is required to pay a penalty under
24 this section with respect to a listed transaction,
25 or

1 “(B) is required to pay a penalty under
2 section 6662A with respect to any reportable
3 transaction at a rate prescribed under section
4 6662A(c),
5 the requirement to pay such penalty shall be disclosed in
6 such reports filed by such person for such periods as the
7 Secretary shall specify. Failure to make a disclosure in
8 accordance with the preceding sentence shall be treated
9 as a failure to which the penalty under subsection (b)(2)
10 applies.

11 “(f) COORDINATION WITH OTHER PENALTIES.—The
12 penalty imposed by this section is in addition to any pen-
13 alty imposed under this title.”

14 (b) CONFORMING AMENDMENT.—The table of sec-
15 tions for part I of subchapter B of chapter 68 is amended
16 by inserting after the item relating to section 6707 the
17 following:

 “Sec. 6707A. Penalty for failure to include reportable transaction
 information with return or statement.”

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to returns and statements the due
20 date for which is after the date of the enactment of this
21 Act.

1 **SEC. 712. ACCURACY-RELATED PENALTY FOR LISTED**
 2 **TRANSACTIONS AND OTHER REPORTABLE**
 3 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
 4 **AVOIDANCE PURPOSE.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is
 6 amended by inserting after section 6662 the following new
 7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
 9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
 10 **TO REPORTABLE TRANSACTIONS.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
 12 reportable transaction understatement for any taxable
 13 year, there shall be added to the tax an amount equal to
 14 20 percent of the amount of such understatement.

15 “(b) REPORTABLE TRANSACTION UNDERSTATE-
 16 MENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘reportable trans-
 18 action understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if
 21 any) in taxable income which results from
 22 a difference between the proper tax treat-
 23 ment of an item to which this section ap-
 24 plies and the taxpayer’s treatment of such
 25 item (as shown on the taxpayer’s return of
 26 tax), and

1 “(ii) the highest rate of tax imposed
2 by section 1 (section 11 in the case of a
3 taxpayer which is a corporation), and

4 “(B) the amount of the decrease (if any)
5 in the aggregate amount of credits determined
6 under subtitle A which results from a difference
7 between the taxpayer’s treatment of an item to
8 which this section applies (as shown on the tax-
9 payer’s return of tax) and the proper tax treat-
10 ment of such item.

11 For purposes of subparagraph (A), any reduction of
12 the excess of deductions allowed for the taxable year
13 over gross income for such year, and any reduction
14 in the amount of capital losses which would (without
15 regard to section 1211) be allowed for such year,
16 shall be treated as an increase in taxable income.

17 “(2) ITEMS TO WHICH SECTION APPLIES.—This
18 section shall apply to any item which is attributable
19 to—

20 “(A) any listed transaction, and

21 “(B) any reportable transaction (other
22 than a listed transaction) if a significant pur-
23 pose of such transaction is the avoidance or
24 evasion of Federal income tax.

1 “(c) HIGHER PENALTIES FOR NONDISCLOSED LIST-
 2 ED AND OTHER AVOIDANCE TRANSACTIONS.—If the re-
 3 quirement of section 6664(d)(2)(A) is not met with re-
 4 spect to any portion of any reportable transaction under-
 5 statement, then subsection (a) shall be applied by sub-
 6 stituting—

7 “(1) ‘30 percent’ for ‘20 percent’ if such under-
 8 statement is attributable to a listed transaction, and

9 “(2) ‘25 percent’ for ‘20 percent’ in the case of
 10 any other understatement.

11 “(d) DEFINITIONS OF REPORTABLE AND LISTED
 12 TRANSACTIONS.—For purposes of this section, the terms
 13 ‘reportable transaction’ and ‘listed transaction’ have the
 14 respective meanings given to such terms by section
 15 6707A(c).

16 “(e) SPECIAL RULES.—

17 “(1) COORDINATION WITH PENALTIES, ETC.,
 18 ON OTHER UNDERSTATEMENTS.—In the case of an
 19 understatement (as defined in section 6662(d)(2))—

20 “(A) the amount of such understatement
 21 (determined without regard to this paragraph)
 22 shall be increased by the aggregate amount of
 23 reportable transaction understatements for pur-
 24 poses of determining whether such understate-

1 ment is a substantial understatement under
2 section 6662(d)(1), but

3 “(B) the addition to tax under section
4 6662(a) shall apply only to the excess of the
5 amount of the substantial understatement (if
6 any) after the application of subparagraph (A)
7 over the aggregate amount of reportable trans-
8 action understatements.

9 “(2) COORDINATION WITH FRAUD PENALTY.—

10 “(A) IN GENERAL.—References to an un-
11 derpayment in section 6663 shall be treated as
12 including references to a reportable transaction
13 understatement.

14 “(B) NO DOUBLE PENALTY.—This section
15 shall not apply to any portion of an understate-
16 ment on which a penalty is imposed under sec-
17 tion 6663.

18 “(3) SPECIAL RULE FOR AMENDED RE-
19 TURNS.—Except as provided in regulations, in no
20 event shall any tax treatment included with an
21 amendment or supplement to a return of tax be
22 taken into account in determining the amount of any
23 reportable transaction understatement if the amend-
24 ment or supplement is filed after the earlier of the
25 date the taxpayer is first contacted by the Secretary

1 regarding the examination of the return or such
 2 other date as is specified by the Secretary.”

3 (b) DETERMINATION OF OTHER UNDERSTATE-
 4 MENTS.—Subparagraph (A) of section 6662(d)(2) is
 5 amended by adding at the end the following flush sen-
 6 tence:

7 “The excess under the preceding sentence shall
 8 be determined without regard to items to which
 9 section 6662A applies.”

10 (c) REASONABLE CAUSE EXCEPTION.—

11 (1) IN GENERAL.—Section 6664 is amended by
 12 adding at the end the following new subsection:

13 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
 14 ABLE TRANSACTION UNDERSTATEMENTS.—

15 “(1) IN GENERAL.—No penalty shall be im-
 16 posed under section 6662A with respect to any por-
 17 tion of a reportable transaction understatement if it
 18 is shown that there was a reasonable cause for such
 19 portion and that the taxpayer acted in good faith
 20 with respect to such portion.

21 “(2) SPECIAL RULES.—Paragraph (1) shall not
 22 apply to any reportable transaction understatement
 23 unless—

24 “(A) the relevant facts affecting the tax
 25 treatment of the item are adequately disclosed

1 in accordance with the regulations prescribed
 2 under section 6011,

3 “(B) there is or was substantial authority
 4 for such treatment, and

5 “(C) the taxpayer reasonably believed that
 6 such treatment was more likely than not the
 7 proper treatment.

8 A taxpayer failing to adequately disclose in accord-
 9 ance with section 6011 shall be treated as meeting
 10 the requirements of subparagraph (A) if the penalty
 11 for such failure was rescinded under section
 12 6707A(d).

13 “(3) RULES RELATING TO REASONABLE BE-
 14 LIEF.—For purposes of paragraph (2)(C)—

15 “(A) IN GENERAL.—A taxpayer shall be
 16 treated as having a reasonable belief with re-
 17 spect to the tax treatment of an item only if
 18 such belief—

19 “(i) is based on the facts and law that
 20 exist at the time the return of tax which
 21 includes such tax treatment is filed, and

22 “(ii) relates solely to the taxpayer’s
 23 chances of success on the merits of such
 24 treatment and does not take into account
 25 the possibility that a return will not be au-

1 dited, such treatment will not be raised on
2 audit, or such treatment will be resolved
3 through settlement if it is raised.

4 “(B) CERTAIN OPINIONS MAY NOT BE RE-
5 LIED UPON.—

6 “(i) IN GENERAL.—An opinion of a
7 tax advisor may not be relied upon to es-
8 tablish the reasonable belief of a taxpayer
9 if—

10 “(I) the tax advisor is described
11 in clause (ii), or

12 “(II) the opinion is described in
13 clause (iii).

14 “(ii) DISQUALIFIED TAX ADVISORS.—
15 A tax advisor is described in this clause if
16 the tax advisor—

17 “(I) is a material advisor (within
18 the meaning of section 6111(b)(1))
19 who participates in the organization,
20 management, promotion, or sale of
21 the transaction or is related (within
22 the meaning of section 267 or 707) to
23 any person who so participates,

1 “(II) is compensated directly or
2 indirectly by a material advisor with
3 respect to the transaction,

4 “(III) has a fee arrangement
5 with respect to the transaction which
6 is contingent on all or part of the in-
7 tended tax benefits from the trans-
8 action being sustained, or

9 “(IV) as determined under regu-
10 lations prescribed by the Secretary,
11 has a continuing financial interest
12 with respect to the transaction.

13 “(iii) DISQUALIFIED OPINIONS.—For
14 purposes of clause (i), an opinion is dis-
15 qualified if the opinion—

16 “(I) is based on unreasonable
17 factual or legal assumptions (includ-
18 ing assumptions as to future events),

19 “(II) unreasonably relies on rep-
20 resentations, statements, findings, or
21 agreements of the taxpayer or any
22 other person,

23 “(III) does not identify and con-
24 sider all relevant facts, or

1 “(IV) fails to meet any other re-
 2 quirement as the Secretary may pre-
 3 scribe.”

4 (2) CONFORMING AMENDMENT.—The heading
 5 for subsection (c) of section 6664 is amended by in-
 6 serting “FOR UNDERPAYMENTS” after “EXCEP-
 7 TION”.

8 (d) CONFORMING AMENDMENTS.—

9 (1) Subparagraph (C) of section 461(i)(3) is
 10 amended by striking “section 6662(d)(2)(C)(iii)”
 11 and inserting “section 1274(b)(3)(C)”.

12 (2) Paragraph (3) of section 1274(b) is amend-
 13 ed—

14 (A) by striking “(as defined in section
 15 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
 16 and

17 (B) by adding at the end the following new
 18 subparagraph:

19 “(C) TAX SHELTER.—For purposes of sub-
 20 paragraph (B), the term ‘tax shelter’ means—

21 “(i) a partnership or other entity,

22 “(ii) any investment plan or arrange-
 23 ment, or

24 “(iii) any other plan or arrangement,

1 if a significant purpose of such partnership, en-
 2 tity, plan, or arrangement is the avoidance or
 3 evasion of Federal income tax.”

4 (3) Section 6662(d)(2) is amended by striking
 5 subparagraphs (C) and (D).

6 (4) Section 6664(c)(1) is amended by striking
 7 “part” and inserting “section 6662 or 6663”.

8 (5) Subsection (b) of section 7525 is amended
 9 by striking “section 6662(d)(2)(C)(iii)” and insert-
 10 ing “section 1274(b)(3)(C)”.

11 (6)(A) The heading for section 6662 is amend-
 12 ed to read as follows:

13 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
 14 **ON UNDERPAYMENTS.”**

15 (B) The table of sections for part II of sub-
 16 chapter A of chapter 68 is amended by striking the
 17 item relating to section 6662 and inserting the fol-
 18 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
 ments.

“Sec. 6662A. Imposition of accuracy-related penalty on under-
 statements with respect to reportable transactions.”

19 (e) **EFFECTIVE DATE.**—The amendments made by
 20 this section shall apply to taxable years ending after the
 21 date of the enactment of this Act.

1 **SEC. 713. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
 2 **MENT PENALTY FOR NONREPORTABLE**
 3 **TRANSACTIONS.**

4 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-
 5 TIONS.—Section 6662(d)(1)(B) (relating to special rule
 6 for corporations) is amended to read as follows:

7 “(B) SPECIAL RULE FOR CORPORA-
 8 TIONS.—In the case of a corporation other than
 9 an S corporation or a personal holding company
 10 (as defined in section 542), there is a substan-
 11 tial understatement of income tax for any tax-
 12 able year if the amount of the understatement
 13 for the taxable year exceeds the lesser of—

14 “(i) 10 percent of the tax required to
 15 be shown on the return for the taxable
 16 year (or, if greater, \$10,000), or

17 “(ii) \$10,000,000.”

18 (b) REDUCTION FOR UNDERSTATEMENT OF TAX-
 19 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
 20 ITEM.—

21 (1) IN GENERAL.—Section 6662(d)(2)(B)(i)
 22 (relating to substantial authority) is amended to
 23 read as follows:

24 “(i) the tax treatment of any item by
 25 the taxpayer if the taxpayer had reason-

1 able belief that the tax treatment was more
2 likely than not the proper treatment, or”.

3 (2) CONFORMING AMENDMENT.—Section
4 6662(d) is amended by adding at the end the fol-
5 lowing new paragraph:

6 “(3) SECRETARIAL LIST.—For purposes of this
7 subsection, section 6664(d)(2), and section
8 6694(a)(1), the Secretary may prescribe a list of po-
9 sitions for which the Secretary believes there is not
10 substantial authority or there is no reasonable belief
11 that the tax treatment is more likely than not the
12 proper tax treatment. Such list (and any revisions
13 thereof) shall be published in the Federal Register
14 or the Internal Revenue Bulletin.”

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 the date of the enactment of this Act.

18 **SEC. 714. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
19 **PRIVILEGES RELATING TO TAXPAYER COM-**
20 **MUNICATIONS.**

21 (a) IN GENERAL.—Section 7525(b) (relating to sec-
22 tion not to apply to communications regarding corporate
23 tax shelters) is amended to read as follows:

24 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
25 REGARDING TAX SHELTERS.—The privilege under sub-

1 section (a) shall not apply to any written communication
 2 which is—

3 “(1) between a federally authorized tax practi-
 4 tioner and—

5 “(A) any person,

6 “(B) any director, officer, employee, agent,
 7 or representative of the person, or

8 “(C) any other person holding a capital or
 9 profits interest in the person, and

10 “(2) in connection with the promotion of the di-
 11 rect or indirect participation of the person in any
 12 tax shelter (as defined in section 1274(b)(3)(C)).”

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to communications made on or
 15 after the date of the enactment of this Act.

16 **PART II—PROMOTER AND PREPARER RELATED** 17 **PROVISIONS**

18 **Subpart A—Provisions Relating to Reportable** 19 **Transactions**

20 **SEC. 721. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

21 (a) IN GENERAL.—Section 6111 (relating to registra-
 22 tion of tax shelters) is amended to read as follows:

23 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

24 “(a) IN GENERAL.—Each material advisor with re-
 25 spect to any reportable transaction shall make a return

1 (in such form as the Secretary may prescribe) setting
2 forth—

3 “(1) information identifying and describing the
4 transaction,

5 “(2) information describing any potential tax
6 benefits expected to result from the transaction, and

7 “(3) such other information as the Secretary
8 may prescribe.

9 Such return shall be filed not later than the date specified
10 by the Secretary.

11 “(b) DEFINITIONS.—For purposes of this section—

12 “(1) MATERIAL ADVISOR.—

13 “(A) IN GENERAL.—The term ‘material
14 advisor’ means any person—

15 “(i) who provides any material aid,
16 assistance, or advice with respect to orga-
17 nizing, promoting, selling, implementing,
18 or carrying out any reportable transaction,
19 and

20 “(ii) who directly or indirectly derives
21 gross income in excess of the threshold
22 amount for such advice or assistance.

23 “(B) THRESHOLD AMOUNT.—For purposes
24 of subparagraph (A), the threshold amount is—

1 “(i) \$50,000 in the case of a report-
2 able transaction substantially all of the tax
3 benefits from which are provided to nat-
4 ural persons, and

5 “(ii) \$250,000 in any other case.

6 “(2) REPORTABLE TRANSACTION.—The term
7 ‘reportable transaction’ has the meaning given to
8 such term by section 6707A(c).

9 “(c) REGULATIONS.—The Secretary may prescribe
10 regulations which provide—

11 “(1) that only 1 person shall be required to
12 meet the requirements of subsection (a) in cases in
13 which 2 or more persons would otherwise be re-
14 quired to meet such requirements,

15 “(2) exemptions from the requirements of this
16 section, and

17 “(3) such rules as may be necessary or appro-
18 priate to carry out the purposes of this section.”

19 (b) CONFORMING AMENDMENTS.—

20 (1) The item relating to section 6111 in the
21 table of sections for subchapter B of chapter 61 is
22 amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”

23 (2)(A) So much of section 6112 as precedes
24 subsection (c) thereof is amended to read as follows:

1 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
 2 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

3 “(a) IN GENERAL.—Each material advisor (as de-
 4 fined in section 6111) with respect to any reportable
 5 transaction (as defined in section 6707A(c)) shall main-
 6 tain, in such manner as the Secretary may by regulations
 7 prescribe, a list—

8 “(1) identifying each person with respect to
 9 whom such advisor acted as such a material advisor
 10 with respect to such transaction, and

11 “(2) containing such other information as the
 12 Secretary may by regulations require.

13 This section shall apply without regard to whether a mate-
 14 rial advisor is required to file a return under section 6111
 15 with regard to such transaction.”

16 (B) Section 6112 is amended by redesignating
 17 subsection (c) as subsection (b).

18 (C) Section 6112(b), as redesignated by sub-
 19 paragraph (B), is amended—

20 (i) by inserting “written” before “request”
 21 in paragraph (1)(A), and

22 (ii) by striking “shall prescribe” in para-
 23 graph (2) and inserting “may prescribe”.

24 (D) The item relating to section 6112 in the
 25 table of sections for subchapter B of chapter 61 is
 26 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.”

1 (3)(A) The heading for section 6708 is amend-
2 ed to read as follows:

3 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
4 **WITH RESPECT TO REPORTABLE TRANS-**
5 **ACTIONS.”**

6 (B) The item relating to section 6708 in the
7 table of sections for part I of subchapter B of chap-
8 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”

9 (c) **EFFECTIVE DATE.**—The amendments made by
10 this section shall apply to transactions with respect to
11 which material aid, assistance, or advice referred to in sec-
12 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
13 1986 (as added by this section) is provided after the date
14 of the enactment of this Act.

15 **SEC. 722. MODIFICATIONS TO PENALTY FOR FAILURE TO**
16 **REGISTER TAX SHELTERS.**

17 (a) **IN GENERAL.**—Section 6707 (relating to failure
18 to furnish information regarding tax shelters) is amended
19 to read as follows:

1 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
2 **ING REPORTABLE TRANSACTIONS.**

3 “(a) IN GENERAL.—If a person who is required to
4 file a return under section 6111(a) with respect to any
5 reportable transaction—

6 “(1) fails to file such return on or before the
7 date prescribed therefor, or

8 “(2) files false or incomplete information with
9 the Secretary with respect to such transaction,
10 such person shall pay a penalty with respect to such return
11 in the amount determined under subsection (b).

12 “(b) AMOUNT OF PENALTY.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), the penalty imposed under subsection (a)
15 with respect to any failure shall be \$50,000.

16 “(2) LISTED TRANSACTIONS.—The penalty im-
17 posed under subsection (a) with respect to any listed
18 transaction shall be an amount equal to the greater
19 of—

20 “(A) \$200,000, or

21 “(B) 50 percent of the gross income de-
22 rived by such person with respect to aid, assist-
23 ance, or advice which is provided with respect
24 to the listed transaction before the date the re-
25 turn including the transaction is filed under
26 section 6111.

1 Subparagraph (B) shall be applied by substituting
 2 ‘75 percent’ for ‘50 percent’ in the case of an inten-
 3 tional failure or act described in subsection (a).

4 “(c) REPORTABLE AND LISTED TRANSACTIONS.—
 5 The terms ‘reportable transaction’ and ‘listed transaction’
 6 have the respective meanings given to such terms by sec-
 7 tion 6707A(c).

8 “(d) RESCISSION AUTHORITY.—The provisions of
 9 section 6707A(d) (relating to authority of Commissioner
 10 to rescind penalty) shall apply to any penalty imposed
 11 under this section.”

12 (b) CLERICAL AMENDMENT.—The item relating to
 13 section 6707 in the table of sections for part I of sub-
 14 chapter B of chapter 68 is amended by striking “tax shel-
 15 ters” and inserting “reportable transactions”.

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to returns the due date for which
 18 is after the date of the enactment of this Act.

19 **SEC. 723. MODIFICATION OF PENALTY FOR FAILURE TO**
 20 **MAINTAIN LISTS OF INVESTORS.**

21 (a) IN GENERAL.—Subsection (a) of section 6708 is
 22 amended to read as follows:

23 “(a) IMPOSITION OF PENALTY.—

24 “(1) IN GENERAL.—If any person who is re-
 25 quired to maintain a list under section 6112(a) fails

1 to make such list available to the Secretary in ac-
 2 cordance with section 6112(b)(1)(A) within 20 busi-
 3 ness days after the date of the Secretary's request,
 4 such person shall pay a penalty of \$10,000 for each
 5 day of such failure after such 20th day.

6 “(2) REASONABLE CAUSE EXCEPTION.—No
 7 penalty shall be imposed by paragraph (1) with re-
 8 spect to the failure on any day if such failure is due
 9 to reasonable cause.”

10 (b) EFFECTIVE DATE.—The amendment made by
 11 this section shall apply to requests made after the date
 12 of the enactment of this Act.

13 **SEC. 724. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
 14 **CONDUCT RELATED TO TAX SHELTERS AND**
 15 **REPORTABLE TRANSACTIONS.**

16 (a) IN GENERAL.—Section 7408 (relating to action
 17 to enjoin promoters of abusive tax shelters, etc.) is amend-
 18 ed by redesignating subsection (c) as subsection (d) and
 19 by striking subsections (a) and (b) and inserting the fol-
 20 lowing new subsections:

21 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
 22 tion in the name of the United States to enjoin any person
 23 from further engaging in specified conduct may be com-
 24 menced at the request of the Secretary. Any action under
 25 this section shall be brought in the district court of the

1 United States for the district in which such person resides,
2 has his principal place of business, or has engaged in spec-
3 ified conduct. The court may exercise its jurisdiction over
4 such action (as provided in section 7402(a)) separate and
5 apart from any other action brought by the United States
6 against such person.

7 “(b) ADJUDICATION AND DECREE.—In any action
8 under subsection (a), if the court finds—

9 “(1) that the person has engaged in any speci-
10 fied conduct, and

11 “(2) that injunctive relief is appropriate to pre-
12 vent recurrence of such conduct,

13 the court may enjoin such person from engaging in such
14 conduct or in any other activity subject to penalty under
15 this title.

16 “(c) SPECIFIED CONDUCT.—For purposes of this
17 section, the term ‘specified conduct’ means any action, or
18 failure to take action, subject to penalty under section
19 6700, 6701, 6707, or 6708.”

20 (b) CONFORMING AMENDMENTS.—

21 (1) The heading for section 7408 is amended to
22 read as follows:

1 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
 2 **LATED TO TAX SHELTERS AND REPORTABLE**
 3 **TRANSACTIONS.”**

4 (2) The table of sections for subchapter A of
 5 chapter 67 is amended by striking the item relating
 6 to section 7408 and inserting the following new
 7 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

8 (c) **EFFECTIVE DATE.**—The amendment made by
 9 this section shall take effect on the day after the date of
 10 the enactment of this Act.

11 **Subpart B—Other Promoter and Preparer Provisions**
 12 **SEC. 731. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY**
 13 **INCOME TAX RETURN PREPARER.**

14 (a) **STANDARDS CONFORMED TO TAXPAYER STAND-**
 15 **ARDS.**—Section 6694(a) (relating to understatements due
 16 to unrealistic positions) is amended—

17 (1) by striking “realistic possibility of being
 18 sustained on its merits” in paragraph (1) and in-
 19 serting “reasonable belief that the tax treatment in
 20 such position was more likely than not the proper
 21 treatment”,

22 (2) by striking “or was frivolous” in paragraph
 23 (3) and inserting “or there was no reasonable basis
 24 for the tax treatment of such position”, and

1 (3) by striking “UNREALISTIC” in the heading
2 and inserting “IMPROPER”.

3 (b) AMOUNT OF PENALTY.—Section 6694 is amend-
4 ed—

5 (1) by striking “\$250” in subsection (a) and in-
6 serting “\$1,000”, and

7 (2) by striking “\$1,000” in subsection (b) and
8 inserting “\$5,000”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to documents prepared after the
11 date of the enactment of this Act.

12 **SEC. 732. PENALTY ON FAILURE TO REPORT INTERESTS IN**
13 **FOREIGN FINANCIAL ACCOUNTS.**

14 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
15 United States Code, is amended to read as follows:

16 “(5) FOREIGN FINANCIAL AGENCY TRANS-
17 ACTION VIOLATION.—

18 “(A) PENALTY AUTHORIZED.—The Sec-
19 retary of the Treasury may impose a civil
20 money penalty on any person who violates, or
21 causes any violation of, any provision of section
22 5314.

23 “(B) AMOUNT OF PENALTY.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in subparagraph (C), the amount of

1 any civil penalty imposed under subpara-
2 graph (A) shall not exceed \$5,000.

3 “(ii) REASONABLE CAUSE EXCEP-
4 TION.—No penalty shall be imposed under
5 subparagraph (A) with respect to any vio-
6 lation if—

7 “(I) such violation was due to
8 reasonable cause, and

9 “(II) the amount of the trans-
10 action or the balance in the account
11 at the time of the transaction was
12 properly reported.

13 “(C) WILLFUL VIOLATIONS.—In the case
14 of any person willfully violating, or willfully
15 causing any violation of, any provision of sec-
16 tion 5314—

17 “(i) the maximum penalty under sub-
18 paragraph (B)(i) shall be increased to the
19 greater of—

20 “(I) \$25,000, or

21 “(II) the amount (not exceeding
22 \$100,000) determined under subpara-
23 graph (D), and

24 “(ii) subparagraph (B)(ii) shall not
25 apply.

1 “(D) AMOUNT.—The amount determined
2 under this subparagraph is—

3 “(i) in the case of a violation involving
4 a transaction, the amount of the trans-
5 action, or

6 “(ii) in the case of a violation involv-
7 ing a failure to report the existence of an
8 account or any identifying information re-
9 quired to be provided with respect to an
10 account, the balance in the account at the
11 time of the violation.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to violations occurring after the
14 date of the enactment of this Act.

15 **SEC. 733. FRIVOLOUS TAX SUBMISSIONS.**

16 (a) CIVIL PENALTIES.—Section 6702 is amended to
17 read as follows:

18 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

19 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
20 TURNS.—A person shall pay a penalty of \$5,000 if—

21 “(1) such person files what purports to be a re-
22 turn of a tax imposed by this title but which—

23 “(A) does not contain information on
24 which the substantial correctness of the self-as-
25 sessment may be judged, or

1 “(B) contains information that on its face
2 indicates that the self-assessment is substan-
3 tially incorrect; and

4 “(2) the conduct referred to in paragraph (1)—

5 “(A) is based on a position which the Sec-
6 retary has identified as frivolous under sub-
7 section (c), or

8 “(B) reflects a desire to delay or impede
9 the administration of Federal tax laws.

10 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS
11 SUBMISSIONS.—

12 “(1) IMPOSITION OF PENALTY.—Except as pro-
13 vided in paragraph (3), any person who submits a
14 specified frivolous submission shall pay a penalty of
15 \$5,000.

16 “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For
17 purposes of this section—

18 “(A) SPECIFIED FRIVOLOUS SUBMIS-
19 SION.—The term ‘specified frivolous submis-
20 sion’ means a specified submission if any por-
21 tion of such submission—

22 “(i) is based on a position which the
23 Secretary has identified as frivolous under
24 subsection (c), or

1 “(ii) reflects a desire to delay or im-
2 pede the administration of Federal tax
3 laws.

4 “(B) SPECIFIED SUBMISSION.—The term
5 ‘specified submission’ means—

6 “(i) a request for a hearing under—

7 “(I) section 6320 (relating to no-
8 tice and opportunity for hearing upon
9 filing of notice of lien), or

10 “(II) section 6330 (relating to
11 notice and opportunity for hearing be-
12 fore levy), and

13 “(ii) an application under—

14 “(I) section 6159 (relating to
15 agreements for payment of tax liabil-
16 ity in installments),

17 “(II) section 7122 (relating to
18 compromises), or

19 “(III) section 7811 (relating to
20 taxpayer assistance orders).

21 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
22 SION.—If the Secretary provides a person with no-
23 tice that a submission is a specified frivolous sub-
24 mission and such person withdraws such submission
25 within 30 days after such notice, the penalty im-

1 posed under paragraph (1) shall not apply with re-
 2 spect to such submission.

3 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
 4 retary shall prescribe (and periodically revise) a list of po-
 5 sitions which the Secretary has identified as being frivo-
 6 lous for purposes of this subsection. The Secretary shall
 7 not include in such list any position that the Secretary
 8 determines meets the requirement of section
 9 6662(d)(2)(B)(ii)(II).

10 “(d) REDUCTION OF PENALTY.—The Secretary may
 11 reduce the amount of any penalty imposed under this sec-
 12 tion if the Secretary determines that such reduction would
 13 promote compliance with and administration of the Fed-
 14 eral tax laws.

15 “(e) PENALTIES IN ADDITION TO OTHER PEN-
 16 ALTIES.—The penalties imposed by this section shall be
 17 in addition to any other penalty provided by law.”

18 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR
 19 HEARINGS BEFORE LEVY.—

20 (1) FRIVOLOUS REQUESTS DISREGARDED.—
 21 Section 6330 (relating to notice and opportunity for
 22 hearing before levy) is amended by adding at the
 23 end the following new subsection:

24 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—
 25 Notwithstanding any other provision of this section, if the

1 Secretary determines that any portion of a request for a
 2 hearing under this section or section 6320 meets the re-
 3 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
 4 then the Secretary may treat such portion as if it were
 5 never submitted and such portion shall not be subject to
 6 any further administrative or judicial review.”

7 (2) PRECLUSION FROM RAISING FRIVOLOUS
 8 ISSUES AT HEARING.—Section 6330(c)(4) is amend-
 9 ed—

10 (A) by striking “(A)” and inserting
 11 “(A)(i)”;

12 (B) by striking “(B)” and inserting “(ii)”;

13 (C) by striking the period at the end of the
 14 first sentence and inserting “; or”; and

15 (D) by inserting after subparagraph (A)(ii)
 16 (as so redesignated) the following:

17 “(B) the issue meets the requirement of
 18 clause (i) or (ii) of section 6702(b)(2)(A).”

19 (3) STATEMENT OF GROUNDS.—Section
 20 6330(b)(1) is amended by striking “under sub-
 21 section (a)(3)(B)” and inserting “in writing under
 22 subsection (a)(3)(B) and states the grounds for the
 23 requested hearing”.

1 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
 2 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
 3 6320 is amended—

4 (1) in subsection (b)(1), by striking “under sub-
 5 section (a)(3)(B)” and inserting “in writing under
 6 subsection (a)(3)(B) and states the grounds for the
 7 requested hearing”, and

8 (2) in subsection (c), by striking “and (e)” and
 9 inserting “(e), and (g)”.

10 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
 11 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
 12 MENTS.—Section 7122 is amended by adding at the end
 13 the following new subsection:

14 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-
 15 standing any other provision of this section, if the Sec-
 16 retary determines that any portion of an application for
 17 an offer-in-compromise or installment agreement sub-
 18 mitted under this section or section 6159 meets the re-
 19 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
 20 then the Secretary may treat such portion as if it were
 21 never submitted and such portion shall not be subject to
 22 any further administrative or judicial review.”

23 (e) CLERICAL AMENDMENT.—The table of sections
 24 for part I of subchapter B of chapter 68 is amended by

1 striking the item relating to section 6702 and inserting
 2 the following new item:

“Sec. 6702. Frivolous tax submissions.”

3 (f) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to submissions made and issues
 5 raised after the date on which the Secretary first pre-
 6 scribes a list under section 6702(c) of the Internal Rev-
 7 enue Code of 1986, as amended by subsection (a).

8 **SEC. 734. REGULATION OF INDIVIDUALS PRACTICING BE-**
 9 **FORE THE DEPARTMENT OF TREASURY.**

10 (a) **CENSURE; IMPOSITION OF PENALTY.**—

11 (1) **IN GENERAL.**—Section 330(b) of title 31,
 12 United States Code, is amended—

13 (A) by inserting “, or censure,” after “De-
 14 partment”, and

15 (B) by adding at the end the following new
 16 flush sentence:

17 “The Secretary may impose a monetary penalty on any
 18 representative described in the preceding sentence. If the
 19 representative was acting on behalf of an employer or any
 20 firm or other entity in connection with the conduct giving
 21 rise to such penalty, the Secretary may impose a monetary
 22 penalty on such employer, firm, or entity if it knew, or
 23 reasonably should have known, of such conduct. Such pen-
 24 alty shall not exceed the gross income derived (or to be
 25 derived) from the conduct giving rise to the penalty and

1 may be in addition to, or in lieu of, any suspension, disbar-
 2 ment, or censure.”

3 (2) EFFECTIVE DATE.—The amendments made
 4 by this subsection shall apply to actions taken after
 5 the date of the enactment of this Act.

6 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
 7 such title 31 is amended by adding at the end the fol-
 8 lowing new subsection:

9 “(d) Nothing in this section or in any other provision
 10 of law shall be construed to limit the authority of the Sec-
 11 retary of the Treasury to impose standards applicable to
 12 the rendering of written advice with respect to any entity,
 13 transaction plan or arrangement, or other plan or arrange-
 14 ment, which is of a type which the Secretary determines
 15 as having a potential for tax avoidance or evasion.”

16 **SEC. 735. PENALTY ON PROMOTERS OF TAX SHELTERS.**

17 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
 18 TERS.—Section 6700(a) is amended by adding at the end
 19 the following new sentence: “Notwithstanding the first
 20 sentence, if an activity with respect to which a penalty
 21 imposed under this subsection involves a statement de-
 22 scribed in paragraph (2)(A), the amount of the penalty
 23 shall be equal to 50 percent of the gross income derived
 24 (or to be derived) from such activity by the person on
 25 which the penalty is imposed.”

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to activities after the date of the
 3 enactment of this Act.

4 **Subtitle C—Executive** 5 **Compensation**

6 **SEC. 741. REPEAL OF 1978 REVENUE ACT LIMITATION ON**
 7 **SECRETARY OF THE TREASURY’S AUTHORITY**
 8 **TO DETERMINE YEAR OF INCLUSION OF**
 9 **AMOUNTS UNDER PRIVATE DEFERRED COM-**
 10 **PENSATION PLANS.**

11 (a) REPEAL.—Section 132 of the Revenue Act of
 12 1978 (Public Law 95–600) is repealed.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to taxable years beginning after
 15 the date of the enactment of this Act.

16 **SEC. 742. TREATMENT OF NONQUALIFIED DEFERRED COM-**
 17 **PENSATION FUNDED WITH ASSETS LOCATED**
 18 **OUTSIDE THE UNITED STATES.**

19 (a) IN GENERAL.—Section 83(c) (relating to special
 20 rules for property transferred in connection with perform-
 21 ance of services) is amended by adding at the end the fol-
 22 lowing new paragraph:

23 “(4) FOREIGN ASSETS FUNDING NONQUALIFIED
 24 DEFERRED COMPENSATION ARRANGEMENTS.—

1 “(A) IN GENERAL.—In determining wheth-
2 er there is a transfer of property for purposes
3 of subsection (a), if assets are—

4 “(i) designated or otherwise available
5 for the payment of nonqualified deferred
6 compensation, and

7 “(ii) located outside the United
8 States,
9 such assets shall not be treated as subject to
10 the claims of creditors.

11 “(B) COMPENSATION FOR SERVICES PER-
12 FORMED IN FOREIGN JURISDICTION.—Subpara-
13 graph (A) shall not apply to assets located in
14 a foreign jurisdiction if substantially all of the
15 services to which the nonqualified deferred com-
16 pensation relates are performed in such juris-
17 diction.

18 “(C) REGULATIONS.—The Secretary shall
19 prescribe such regulations as are necessary to
20 carry out the provisions of this paragraph, in-
21 cluding regulations to exempt arrangements
22 from the application of this paragraph if—

23 “(i) the arrangement will not result in
24 an improper deferral of United States tax,
25 and

1 “(ii) the assets involved in the ar-
 2 rangement will be readily accessible in any
 3 insolvency or bankruptcy proceeding.”

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to amounts deferred after Decem-
 6 ber 31, 2002.

7 **SEC. 743. INCLUSION IN GROSS INCOME OF FUNDED DE-**
 8 **FERRED COMPENSATION OF CORPORATE IN-**
 9 **SIDERS.**

10 (a) IN GENERAL.—Subpart A of part I of subchapter
 11 D of chapter 1 is amended by adding at the end the fol-
 12 lowing new section:

13 **“SEC. 409A. INCLUSION IN GROSS INCOME OF FUNDED DE-**
 14 **FERRED COMPENSATION OF CORPORATE IN-**
 15 **SIDERS.**

16 “(a) IN GENERAL.—If an employer maintains a fund-
 17 ed deferred compensation plan—

18 “(1) compensation of any disqualified individual
 19 which is deferred under such funded deferred com-
 20 pensation plan shall be included in the gross income
 21 of the disqualified individual or beneficiary for the
 22 1st taxable year in which there is no substantial risk
 23 of forfeiture of the rights to such compensation, and

24 “(2) the tax treatment of any amount made
 25 available under the plan to a disqualified individual

1 or beneficiary shall be determined under section 72
2 (relating to annuities, etc.).

3 “(b) FUNDED DEFERRED COMPENSATION PLAN.—

4 For purposes of this section—

5 “(1) IN GENERAL.—The term ‘funded deferred
6 compensation plan’ means any plan providing for the
7 deferral of compensation unless—

8 “(A) the employee’s rights to the com-
9 pensation deferred under the plan are no great-
10 er than the rights of a general creditor of the
11 employer, and

12 “(B) all amounts set aside (directly or in-
13 directly) for purposes of paying the deferred
14 compensation, and all income attributable to
15 such amounts, remain (until made available to
16 the participant or other beneficiary) solely the
17 property of the employer (without being re-
18 stricted to the provision of benefits under the
19 plan), and

20 “(C) the amounts referred to in subpara-
21 graph (B) are available to satisfy the claims of
22 the employer’s general creditors at all times
23 (not merely after bankruptcy or insolvency).

24 Such term shall not include a qualified employer
25 plan.

1 “(2) SPECIAL RULES.—

2 “(A) EMPLOYEE’S RIGHTS.—A plan shall
3 be treated as failing to meet the requirements
4 of paragraph (1)(A) unless—

5 “(i) the compensation deferred under
6 the plan is payable only upon separation
7 from service, death, disability (within the
8 meaning of section 1614(a)(3) of the So-
9 cial Security Act (42 U.S.C. 1382c(a)(3))),
10 or at a specified time (or pursuant to a
11 fixed schedule), and

12 “(ii) the plan does not permit the ac-
13 celeration of the time such deferred com-
14 pensation is payable by reason of any
15 event.

16 If the employer and employee agree to a modi-
17 fication of the plan that accelerates the time for
18 payment of any deferred compensation, then all
19 compensation previously deferred under the
20 plan shall be includible in gross income for the
21 taxable year during which such modification
22 takes effect and the taxpayer shall pay interest
23 at the underpayment rate on the underpay-
24 ments that would have occurred had the de-
25 ferred compensation been includible in gross in-

1 come on the earliest date that there is no sub-
2 stantial risk of forfeiture of the rights to such
3 compensation.

4 “(B) CREDITOR’S RIGHTS.—A plan shall
5 be treated as failing to meet the requirements
6 of paragraph (1)(B) with respect to amounts
7 set aside in a trust unless—

8 “(i) the employee has no beneficial in-
9 terest in the trust,

10 “(ii) assets in the trust are available
11 to satisfy claims of general creditors at all
12 times (not merely after bankruptcy or in-
13 solvency), and

14 “(iii) there is no factor that would
15 make it more difficult for general creditors
16 to reach the assets in the trust than it
17 would be if the trust assets were held di-
18 rectly by the employer in the United
19 States.

20 Except as provided in regulations prescribed by
21 the Secretary, such a factor shall include the lo-
22 cation of the trust outside the United States
23 unless substantially all of the services to which
24 the nonqualified deferred compensation relates
25 are performed outside the United States. Such

1 regulations may exempt any such trust if the
2 trust will not result in an improper deferral of
3 United States tax, and the assets involved in
4 the trust will be readily accessible in any insol-
5 vency or bankruptcy proceeding.

6 “(c) DISQUALIFIED INDIVIDUAL.—For purposes of
7 this section, the term ‘disqualified individual’ means, with
8 respect to a corporation, any individual—

9 “(1) who is subject to the requirements of sec-
10 tion 16(a) of the Securities Exchange Act of 1934
11 with respect to such corporation, or

12 “(2) who would be subject to such requirements
13 if such corporation were an issuer of equity securi-
14 ties referred to in such section.

15 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
16 For purposes of this section—

17 “(1) QUALIFIED EMPLOYER PLAN.—The term
18 ‘qualified employer plan’ means—

19 “(A) any plan, contract, pension, account,
20 or trust described in subparagraph (A) or (B)
21 of section 219(g)(5), and

22 “(B) any other plan of an organization ex-
23 empt from tax under subtitle A.

1 “(2) PLAN INCLUDES ARRANGEMENTS, ETC.—

2 The term ‘plan’ includes any agreement or arrange-
3 ment.

4 “(3) SUBSTANTIAL RISK OF FORFEITURE.—The
5 rights of a person to compensation are subject to a
6 substantial risk of forfeiture if such person’s rights
7 to such compensation are conditioned upon the fu-
8 ture performance of substantial services by any indi-
9 vidual.

10 “(4) TREATMENT OF EARNINGS.—Except for
11 purposes of subsection (a)(1) and the last sentence
12 of (b)(2)(A), references to deferred compensation
13 shall be treated as including references to income at-
14 tributable to such compensation or such income.”

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for such subpart A is amended by adding at the end the
17 following new item:

“Sec. 409A. Inclusion in gross income of funded deferred com-
 pensation of corporate insiders.”

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to amounts deferred after Decem-
20 ber 31, 2002.

1 **SEC. 744. INCREASE IN WITHHOLDING FROM SUPPLE-**
2 **MENTAL WAGE PAYMENTS IN EXCESS OF**
3 **\$1,000,000.**

4 (a) IN GENERAL.—If an employer elects under
5 Treasury Regulation 31.3402(g)–1 to determine the
6 amount to be deducted and withheld from any supple-
7 mental wage payment by using a flat percentage rate, the
8 rate to be used in determining the amount to be so de-
9 ducted and withheld shall not be less than 28 percent (or
10 the corresponding rate in effect under section 1(i)(2) of
11 the Internal Revenue Code of 1986 for taxable years be-
12 ginning in the calendar year in which the payment is
13 made).

14 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

15 (1) IN GENERAL.—Notwithstanding subsection
16 (a), if the supplemental wage payment, when added
17 to all such payments previously made by the em-
18 ployer to the employee during the calendar year, ex-
19 ceeds \$1,000,000, the rate used with respect to such
20 excess shall be equal to the maximum rate of tax in
21 effect under section 1 of such Code for taxable years
22 beginning in such calendar year.

23 (2) AGGREGATION.—All persons treated as a
24 single employer under subsection (a) or (b) of sec-
25 tion 52 of the Internal Revenue Code of 1986 shall

1 be treated as a single employer for purposes of this
2 subsection.

3 (c) CONFORMING AMENDMENT.—Section 13273 of
4 the Revenue Reconciliation Act of 1993 (Public Law 103–
5 66) is repealed.

6 (d) EFFECTIVE DATE.—The provisions of, and the
7 amendment made by, this section shall apply to payments
8 made after December 31, 2002.

9 **Subtitle D—Other Provisions**

10 **SEC. 751. AFFIRMATION OF CONSOLIDATED RETURN REGU-** 11 **LATION AUTHORITY.**

12 (a) IN GENERAL.—Section 1502 (relating to consoli-
13 dated return regulations) is amended by adding at the end
14 the following new sentence: “In prescribing such regula-
15 tions, the Secretary may prescribe rules applicable to cor-
16 porations filing consolidated returns under section 1501
17 that are different from other provisions of this title that
18 would apply if such corporations filed separate returns.”

19 (b) RESULT NOT OVERTURNED.—Notwithstanding
20 subsection (a), the Internal Revenue Code of 1986 shall
21 be construed by treating Treasury regulation § 1.1502–
22 20(c)(1)(iii) (as in effect on January 1, 2001) as being
23 inapplicable to the type of factual situation in 255 F.3d
24 1357 (Fed. Cir. 2001).

1 (c) **EFFECTIVE DATE.**—The provisions of this section
2 shall apply to taxable years beginning before, on, or after
3 the date of the enactment of this Act.

4 **SEC. 752. DENIAL OF DEDUCTION FOR CERTAIN FINES,**
5 **PENALTIES, AND OTHER AMOUNTS.**

6 (a) **IN GENERAL.**—Subsection (f) of section 162 (re-
7 lating to trade or business expenses) is amended to read
8 as follows:

9 “(f) **FINES, PENALTIES, AND OTHER AMOUNTS.**—

10 “(1) **IN GENERAL.**—Except as provided in para-
11 graph (2), no deduction otherwise allowable shall be
12 allowed under this chapter for any amount paid or
13 incurred (whether by suit, agreement, or otherwise)
14 to, or at the direction of, a government in relation
15 to the violation of any law or the investigation or in-
16 quiry into the potential violation of any law.

17 “(2) **EXCEPTION FOR AMOUNTS CONSTITUTING**
18 **RESTITUTION.**—Paragraph (1) shall not apply to
19 any amount which the taxpayer establishes con-
20 stitutes restitution for damage or harm caused by
21 the violation of any law or the potential violation of
22 any law. This paragraph shall not apply to any
23 amount paid or incurred as reimbursement to the
24 government for the costs of any investigation or liti-
25 gation.

1 “(3) TREATMENT OF CERTAIN NONGOVERN-
2 MENTAL REGULATORY ENTITIES.—For purposes of
3 paragraph (1), amounts paid or incurred to, or at
4 the direction of, the following nongovernmental enti-
5 ties shall be treated as amounts paid or incurred to,
6 or at the direction of, a government:

7 “(A) Any nongovernmental entity which
8 exercises self-regulatory powers (including im-
9 posing sanctions) in connection with a qualified
10 board or exchange (as defined in section
11 1256(g)(7)).

12 “(B) To the extent provided in regulations,
13 any nongovernmental entity which exercises
14 self-regulatory powers (including imposing sanc-
15 tions) as part of performing an essential gov-
16 ernmental function.”

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to amounts paid or incurred after
19 the date of the enactment of this Act, except that such
20 amendment shall not apply to amounts paid or incurred
21 under any binding order or agreement entered into on or
22 before such date.

○